133-67

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1370.

HENRY E. SCHRADER, ASSIGNEE OF THE PEOPLE'S BANK OF BELLEVILLE, ILLINOIS, APPELLANT,

vs.

THE MANUFACTURERS' NATIONAL BANK OF CHICAGO ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 16, 1889.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1370.

HENRY E. SCHRADER, ASSIGNEE OF THE PEOPLE'S BANK OF BELLEVILLE, ILLINOIS, APPELLANT,

vs.

THE MANUFACTURERS' NATIONAL BANK OF CHICAGO ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Order appointing receiver, &c.	2	1
Amended bill of Irons	5	2
Answer of Charles Comstock to bill	25	13
Replication to answers	35	18
Order *pro confesso* and of reference to master	37	18
Petition of assignee of People's Bank of Belleville	39	19
Order granting petition of assignee	40	20
Interlocutory decree of July 23, 1883	41	21
Order fixing time to take proofs, &c.	47	23
Testimony of Ira Holmes on first reference	49	23
Exhibit 54—Discharge in bankruptcy of Ira Holmes	51	25
Master's report, filed January 6, 1885	53	26
Schedule A—Extract (item 44) from schedule of creditors, showing amount due Joseph Penn, assignee, &c.	58	28
Evidence (notes, &c.) in support of claim of People's Bank	59	28
Affidavit of claim of People's Bank	61	30
Decree of June 1, 1886	63	31
Affidavit of H. G. Miller	80	38
Agreement between Ira Holmes and People's Bank of Belleville, August 27, 1874	83	40
Order to redocket cause and for reference to master	90	43

JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 18, 1889.

	Original.	Print.
Order extending time to take proofs	92	43
Master's report, June 16, 1888	93	44
Schedule A—Valid outstanding claims against Manufacturers' National Bank	102	47
B—Stockholders as to whom a decree can now be entered	103	48
C—Deceased stockholders, &c.	104	48
D—Valid outstanding claims against Manufacturers' National Bank	105	50
E—Stockholders as to whom a decree can now be entered	106	51
F—Deceased stockholders, &c.	107	51
Stipulation as to master's report	108	52
Evidence before the master	109	53
Testimony of Ira Holmes	109	53
Defendant's Exhibit L—Agreement between Ira Holmes and People's Bank of Belleville, August 27, 1874	121	59
Testimony of Ira Holmes (cross)	127	62
Charles W. Thomas	137	68
Ira Holmes (recalled)	168	85
Henry E. Picket	177	89
Oath to schedules	193	96
Schedule A^3—Schedule of creditors whose claims are unsecured—Henry E. Picket, bankrupt	194	97
Exhibit A—Agreement between People's Bank of Belleville and Manufacturers' National Bank, September 2, 1874	203	104
B—Agreement of Manufacturers' National Bank, September 2, 1874	205	105
Diagram of Holmes' subdivision	206	105
1—Agreement between Ira Holmes and the People's Bank of Belleville, August 27, 1874	207	105
2—Deed from Henry E. Pickett *et ux.* to Joseph A. Holmes, August 5, 1873	214	108
Files in People's Bank of Belleville *vs.* Manufacturers' National Bank	223	112
Bond for costs	223	112
Præcepe for summons	224	112
Declaration	225	113
Copies of instruments sued on	238	119
Summons	241	123
Plea and affidavits	242	123
Petition for removal	244	125
Bond for removal	247	126
Order for removal	249	128
Clerk's certificate	250	128
Stipulation waiving jury	251	128
Additional counts	252	129
Account sued	253	129
Hearing	254	129
Submission	255	130
Judgment	256	130
Bill of exceptions	257	130
Bond on writ of error	260	132

	Original.	Print.
Mandate of Supreme Court of the United States	262	132
Judgment on mandate	264	134
Exceptions of assignee of People's Bank to master's report	265	134
Exceptions of complainants to master's report	267	135
Order setting exceptions for hearing, &c.	270	136
Hearing and submission	271	136
Opinion of Judge Blodgett	272	137
Decree of March 27, 1889	278	139
Order substituting Sebastian Fietsam as assignee	287	143
Stipulation as to record	288	143
Appeal bond	291	144
Clerk's certificate	294	145
Assignment of errors	295	146

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for said district, on Wednesday, the twenty-seventh day of March, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and thirteenth year.

WM. H. BRADLEY, *Clerk.*

AGNES F. IRONS and ANDREW H. FOSKETT, Executrix and Executor of the Estate of James Irons, Deceased, *et al.*,
vs.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO *et al.*
} In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-sixth day of February, 1875, in the December term of said court, 1874, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, appears the following entry, to wit:

2 *Order.*

JAMES IRONS
vs.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO and IRA HOLMES.
} In Chancery.

The demurrer of the said defendants to the bill of complaint in this cause having heretofore come on to be argued and the counsel on both sides having been heard thereupon, it is ordered that said demurrer be overruled.

And said defendants having elected to stand by said demurrer, thereupon leave is granted to said defendants to elect whether they will make discovery as required by the bill of complaint in this behalf or will consent to the reference of said cause to a master in chancery of this court to examine, take proofs, and report as to the assets of said defendant, The Manufacturers' National Bank of Chicago, in its hands of its officers or any other persons or of the defendant, Ira Holmes, as well as to the liabilities of said bank and the acts and doings of its officers or agents or of said Ira Holmes regarding such liabilities or any liabilities of said bank, such election to be made and reported to this court by Monday morning next on the coming in of this court and the proper order then to be made in the premises.

3 And thereupon, on motion of complainant's solicitors, it is ordered and decreed that Joel D. Harvey, of the city of Chicago, in this district, be appointed receiver of all the property, real and personal, claims, rights, credits, assets, books of account,

abstracts of title, deeds, and other evidences and muniments of title and effects of every description of said defendant, The Manufacturers' National Bank of Chicago, with full power and authority to take and receive possession and control of the same, and the same to collect, convert, manage, and dispose of, subject to the order and direction of this court; said Joel D. Harvey first, however, to execute and deliver his bond in due form of law as such receiver in the sum of one hundred thousand dollars, with John R. Walsh, of Chicago, as surety, who is approved as such surety, and that said defendant, The Manufacturers' National Bank of Chicago, its officers, agents, and attorneys, and said defendant, Ira Holmes, be enjoined from collecting, disposing of, or in any way interfering or intermeddling with the property and assets of said defendant, The Manufacturers' National Bank of Chicago, until the further order of this court.

And thereupon also, on motion, it is ordered that Joseph Shugert, The Third National Bank of St. Louis, and David O. Smart and Charles Gudgell, copartners, be allowed to join in this action as complainants with said complainant, James Irons, subject 4 to the further order of the court.

Afterwards, to wit, on the fifth day of October, 1876, came the complainant, by his solicitors, and filed in said clerk's office his amended bill of complaint in said entitled cause; which said amended bill is in the words and figures following, to wit:

5 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court of said District, of the October Term, 1876.

JAMES IRONS
vs.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO and IRA HOLMES. } In Chancery.

To the honorable the judges of said circuit court, in chancery sitting:

Your orator, having heretofore exhibited to your honors his original bill of complaint in said cause, presents herewith his amended bill and prays that the same may be allowed, and thereby further shows unto your honors—

That the said defendant, the said Manufacturers' National Bank, was a corporation organized under and in pursuance of the laws of the United States, to wit, the act commonly known as the national banking act, some time prior to the suspension of the said bank as hereinafter set forth, but just what time your orator is unable to state, and therefore prays, if such fact be material, that the same be fully stated and set forth by the said defendants and each of them in their answer hereto.

That the capital stock of the said bank was five hundred thousand dollars or thereabouts, consisting of five thousand shares of the par value, as your orator is informed and believes, of one hundred dollars each.

6 Your orator further shows unto your honors that he is informed and believes and charges the fact to be that the said bank suspended payment, closed its doors, and ceased to transact business as a bank on or about the 22d day of September, A. D. 1873; that at the time of the said suspension and for a long time prior thereto the said bank was and had been insolvent and unable to pay its debts and has ever since continued to be and now is utterly and wholly insolvent and unable to pay its now existing debts or any part thereof.

Your orator further shows unto your honors that he was a depositor of the said bank, and that at the time of the said suspension in the manner as aforesaid there was due him upon his said deposit account the sum of $11,596.75; that afterwards and on or about the second day of December, 1874, he obtained a judgment in the said circuit court of the United States for the northern district of Illinois against the said bank for the sum of twelve thousand four hundred and eight and $\frac{51}{100}$ dollars ($12,408.51), the amount of his said deposit and the lawful interest thereon, and thereupon caused an execution to be issued on said judgment, which said execution was afterwards and on or about the first day of February, 1875, returned to the office of the clerk of said court, no part satisfied; that the said judgment has never been paid and is still in full force and effect, all of which, &c.

Your orator further shows unto your honors that after the said
bank had suspended payment in the manner as aforesaid it went into
voluntary liquidation, in pursuance of the provisions of the
7 said banking act, for the averred and pretended purpose of
settling with its creditors and closing up its affairs; that such action on the part of the said bank was put forth and carried on by its president, the said defendant, Holmes, and was fully known to all the officers, directors, and stockholders thereof, and was accepted, acquiesced in, and ratified by them and each of them; that after such action had been taken by the said bank a large amount of its indebtedness was settled or pretended to be settled by the said defendant, Holmes, but just what amount your orator is unable to state. Your orator, however, is informed and believes and alleges the fact to be that the present and existing indebtedness of the said bank is forty thousand dollars or thereabouts.

That your orator is informed and believes and charges the fact to be that by reason of the said bank going into voluntary liquidation no receiver of the effects thereof was ever appointed by the Comptroller of the Currency of the United States in pursuance of the provisions of the said banking act, and he avers and charges the fact to be that after the proceedings for voluntary liquidation had been commenced by said bank and on or about the 12th day of January, A. D. 1875, application was made to the said Comptroller of Currency by your orator for the appointment of a receiver in pursuance of the provisions of the said banking act, and the said Comptroller thereupon refused to make such appointment for the reason hereinbefore stated.

And your orator further shows unto your honors that he is informed and believes and charges the fact to be that at the
8 time the said bank suspended payment and went int voluntary liquidation in the manner aforesaid Thomas Lovel, who is a resident of said northern district of Illinois and a citizen of the State of Illinois, was a stockholder in said bank and was and is the owner and holder of eighty shares of the capital stock thereof.

That Mrs. A. E. Camfield, whose first name is to your orator unknown and who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of twenty-four shares of the capital stock thereof.

That William H. Adams, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of two hundred and forty shares of the capital stock thereof.

That E. M. Moffett, whose first name is to your orator unknown and who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and the owner and holder of fifty shares of the capital stock thereof.

That William A. Butters, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of ten shares of the capital stock thereof.

That E. A. Sowles, whose first name is to your orator unknown, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of twenty-five shares of the capital
9 stock thereof.

That said Sinton, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of fifty-five shares of the capital stock thereof.

That Charles Osborn, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of ten shares of the capital stock thereof.

That Alonzo Richmond, who is a resident of the city of Buffalo, in the northern district of New York, and a citizen of the State of New York, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of one hundred shares of the capital stock thereof.

That the firm of Heath and Milligan, composed of Monroe Heath and William F. Milligan, who are residents of said northern district of Illinois and citizens of the State of Illinois, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of twenty shares of the capital stock thereof.

That W. W. Crapo, whose first name and whose residence are to your orator unknown, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of fifty shares of the capital stock thereof.

That Rufus P. Williams, whose place of residence is unknown to your orator, was at the time aforesaid a stockholder in said bank and was and is the owner and holder of fifty shares of the capital stock thereof.

10 Your orator further shows unto your honors that he is informed and believes and charges the fact to be that at the time the said bank suspended payment in the manner as aforesaid Laura M. Bushnell, who is a resident of said district and a citizen of said State, was a stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That Charles Comstock, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of one hundred and fifty shares of the capital stock thereof.

That Edward Leonard, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of ten shares of the capital stock thereof.

That Morris Merrill, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of eight shares of the capital stock thereof.

That William M. Tilden, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of eighty shares of the capital stock thereof.

That the said defendant, Ira Holmes, was at the time aforesaid a stockholder in said bank and was the owner and holder of one thousand eight hundred and thirteen shares of the capital stock thereof.

11 That Silas B. Cobb, who is also a resident of said district and a citizen of said State, was a stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That Marshall Field, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That H. P. Stanley, whose first name is to your orator unknown, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That C. Hutchinson, whose first name is to your orator unknown, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That William G. E. Pope, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of fifty-five shares of the capital stock thereof.

That Swayne Wickersham, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of sixty shares of the capital stock thereof.

That Joseph L. McDuffee, who is also a resident of said district and a citizen of said State, was at the time aforesaid a
12 stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That John N. Gage, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That Stephen T. Field, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That William L. Fawcett, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That Milford D. Buchannan, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of fifty shares of the capital stock thereof.

That Gill W. Peaslee, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and the owner and holder of fifty shares of the capital stock thereof.

That Thomas D. Snyder, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of fifty shares
13 of the capital stock thereof.

That Joseph A. Holmes, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and was the owner and holder of five hundred shares of the capital stock thereof.

That the firm of Ray and Whitney, composed of Charles E. Ray and William C. Whitney, who are residents of said district and citizens of said State, was at the time aforesaid a stockholder in said bank and the owner and holder of one hundred shares of the capital stock thereof.

That Nancy Hannah, who is also a resident of said district and a citizen of said State, was at the time aforesaid a stockholder in said bank and the owner and holder of ten shares of the capital stock thereof.

That Edgar Holmes, who is a resident of the city of Rochester, in the northern district of New York, and a citizen of the State of New York, was at the time aforesaid a stockholder in said bank and the owner and holder of one thousand shares of the capital stock thereof.

Your orator further shows unto your honors that he is informed and believes and charges the fact to be that while the said bank was contemplating insolvency and was in fact insolvent and after the suspension of payment thereof in the manner as aforesaid, but at just what time your orator is unable to state, the said defendants, Laura A. Bushnell, Edward Leonard, William M. Tilden, Silas B. Cobb, H. P. Stanley, C. Hutchinson, Swayne Wickersham,
14 Joseph L. McDuffee, John N. Gage, Stephen T. Field, William L. Fawcett, Milford D. Buchannan, Gill W. Peasley, Thomas D. Snyder, Joseph A. Holmes, Charles E. Ray, and William C. Whitney, Nancy Hannah and Edgar Holmes combining and confederating with the said defendant, Ira Holmes, and others to your orator unknown, surrendered and delivered up to the said defendant, Ira Holmes, or to some parties in his interest unknown to your orator the certificates or shares of stock so held and owned by them in the manner as aforesaid, and the said defendant Holmes thereupon pretended to purchase and cancel the same; that the said defendant, Charles Comstock, under said pretended arrangement, thereupon surrendered and delivered up to the said defendant, Ira Holmes, or some party in his interest one hundred shares of the said stock so held and owned by him in the manner as aforesaid; that the said defendant, Morris Merrill, under said pretended arrangement, thereupon surrendered and delivered up to the said defendant, Ira Holmes, or some party in his interest five shares of the said stock so held and owned by him as aforesaid; that the said defendant, Marshall Field, under said pretended arrangement, thereupon surrendered and delivered up to the said defendant, Ira Holmes, or some one in his interest ten shares of the said stock so held and owned by him as aforesaid; that the said defendant, William G. E. Pope, under said pretended arrangement, thereupon surrendered and delivered up to the said defendant, Ira Holmes, or some one in his interest fifty shares of the stock so held and owned by him in the manner as aforesaid.

15 And your orator charges that the said stock so surrendered and delivered to the said defendant, Ira Holmes, in the manner as aforesaid was not surrendered or delivered until it was known to the said defendant Holmes and the said stockholders and each of them that the said bank was insolvent, and in fact not until the said bank had suspended payment and gone into voluntary liquidation in the manner as aforesaid.

And your orator further charges that the said stock was purchased (if purchased at all) in the interest and for the sole benefit of the said defendant Holmes, and that the same was purchased with the money and assets of the said bank, and was so purchased and cancelled at the request of and by the direction of the said stockholders themselves and for the avowed purpose of relieving them and each of them from any personal liability on said stock to the creditors of the said bank; and your orator further charges that the said shares or certificates of stock so as aforesaid held and owned by the said stockholders and each of them were in fact never cancelled, nor were the same or any of them ever transferred on the books of the said bank, but now stand on said books in the names of the said defendants, and your orator therefore charges that the said pretended purchase and cancellation of the said stock so made in the manner and for the purpose aforesaid was and is a fraud upon the rights of your orator and the other creditors of the said bank and should therefore — set aside.

Your orator further shows unto your honors that he is unable to state nor can he ascertain from the books of the said bank just how much was paid to the said stockholders, respectively, for the stock so
as aforesaid held and owned by them and each of them by
16 the said defendant, Ira Holmes, nor can he state the partic-
ulars concerning the said surrender, trades, or transfers, &c., &c., in relation thereto; and he therefore prays that the said defendants and each of them may be compelled in their answers hereto to full, perfect, and complete discovery make of all their acts and doings of and concerning the said shares or certificates of stock so as aforesaid held and owned by them.

All of which said acts and doings on the part of the said defendants and each of them are contrary to equity and good conscience and to the manifest wrong and injury of your orator.

And forasmuch as your orator is remediless in the premises at and by the strict rules of the common law and relievable only in a court of equity where matters of this and the like nature are cognizable and relievable, and—

To the end, therefore, that equity may be done and your orator have the relief hereinafter prayed, and to the end that the said bank, Ira Holmes, Thomas Lord, Mrs. A. E. Canfield, William H. Adams, E. M. Moffett, William A. Butters, E. A. Sowles, David Sinton, Charles Osborn, Monroe Heath, William F. Milligan, Alonzo Richmond, W. W. Crapo, Rufus P. Williams, Laura A. Bushnell, Charles Comstock, Edward Leonard, Morris Merrill, William M. Tilden, Silas B. Cobb, Marshall Field, H. P. Stanley, C. Hutchinson, William G. E. Pope, Swayne Wickersham, Joseph L. McDuffee, John N. Gage, Stephen T. Field, William L. Fawcett, Milford D. Buchannan, Gill W. Peaslee, Thomas D. Snyder, Joseph A. Holmes, Charles E. Ray, William C. Whitney Nancy Hannah, and Edgar Holmes, defendants herein, may, if they can show, why your orator
should not have the relief hereinafter prayed, and may, ac-
17 cording to the utmost of their several knowledge, remem-
brance, information, and belief, full, true, direct, and perfect answer make to the matters and things set forth in this your orator's amended bill of complaint under their respective oaths, and that the said defendants and each of them may full, true, direct, and perfect answers make to the several interrogatories hereinafter mentioned and set forth as follows, to wit:

Interrogatory 1st. State when the Manufacturers' National Bank of Chicago was organized, who were the officers, directors, and stockholders thereof on the 22d day of September, A. D. 1873, and the amount of stock held by each one, and where they reside.

Interrogatory 2nd. State when the said bank suspended payment and what action was taken by the officers, directors, and stockholders thereof in relation thereto. State what meetings were held, when the same were held, who were present, and what was done thereat.

Interrogatory 3rd. State what action was taken by the said bank, its officers, directors, and stockholders, about the same going into voluntary liquidation. State whether or not any meetings were held for that purpose, and, if so, who were present at such meetings, where and when the same were held, and what was done thereat. State the same fully and particularly.

Interrogatory 4th. State when the said bank went into voluntary
liquidation, give the exact date, and state who were the stock-
18 holders at that time and how much stock was held and
owned by each one.

Interrogatory 5th. State when it was first known to the officers, directors, and stockholders of the said bank that the same was insolvent and would be compelled to suspend payment.

Interrogatory 6th. State what transfers or sales of stock were made after the said bank suspended payment, when, where, to whom, and by whom made, and the consideration thereof. State fully and particularly how the same were made.

Interrogatory 7th. State what transfers or sales of stock were made after the said bank went into voluntary liquidation, when, where, by whom, and to whom such transfers or sales were made and the consideration thereof. State the same fully and particularly how the same were made.

Interrogatory 8th. State whether or not at any meetings of the officers, directors, and stockholders of the said bank held after the same had suspended payment any talk or discussion was had about transfers or sales of stock; and, if so, what was said and by whom. State also when and where such meeting or meetings were held and who was present.

Interrogatory 9th. State whether or not all transfers or sales of
stock made after the said bank suspended payment were not made
to the defendant, Ira Holmes, or to some one in his interest
19 If so, state who paid for the same and whether or not such
payments were made in money; and, if not, with what and
how the same was made.

Interrogatory 10th. State whether or not any of the stock sold after the said bank suspended payment was transferred on the books of the bank; if so, state when and where and by whom and to whom such transfer was made.

Interrogatory 11th. State whether or not the shares of stock held by the stockholders of the said bank at the time of the suspension thereof were full, paid-up shares; if not, state what amount or amounts was due thereon and from whom the same was due.

Interrogatory 12th. State who are stockholders of the said bank at the present time and how many shares of stock are held by such stockholders and each of them, respectively.

Interrogatory 13th. State fully and particularly for what purpose the stockholders of the said bank made or pretended to make the sales and transfers of stock held by them at the time the said bank suspended payment or after that time.

And your orator prays that the defendants and each of them may be compelled to make and render unto your honors a full, just, and perfect account of the number of shares of stock of the said defendant, the said Manufacturers' National Bank, held and owned by them at the time the said bank suspended payment in the manner as
20 aforesaid; that the said defendants and each of them may be
compelled to make and render a true, just, and perfect account of all sales, transfers, surrenders, or deliveries of stock made by them or either of them to the said defendant, Ira Holmes, or parties in his interest after the said bank had suspended payment in the manner as aforesaid and of the moneys, property, and effects received from the said defendant, Ira Holmes, or from parties in his interest for the same; that all sales, transfers, surrenders, deliveries, &c., or pretended sales, &c., &c., of stock so, as aforesaid, made to the said defendant, Ira Holmes, or to parties in his interest after the said bank had become insolvent and suspended payment in the manner as aforesaid may be set aside and be decreed to have been made in fraud of the rights of your orator and the other creditors of the said bank; that the same shall be decreed to stand as though such sales, transfers, surrenders, or pretended sales, &c., &c., had never been made, and the said stockholders and each of them be subjected to the liability created by the statute thereon in the same manner and to the same extent as though such sales, transfers, or surrenders had never been made, and that the said stockholders or such of them as have sold, transferred, or surrendered, or pretended to sell, transfer, or surrender, &c., the shares of stock so, as aforesaid, held and owned by them at the time the said bank suspended payment in the manner as aforesaid may be decreed to hold the moneys, property, and effects received by them for said stock in the manner as aforesaid in trust for the creditors of the said bank, and, upon the respective amounts being ascertained, that they be decreed to pay the
21 same to creditors thereof or to the receiver thereof or to such
person or persons as your honors shall order and direct.

That an account be taken of all the present indebtedness of the said bank as far as the same can be ascertained.

That an account be taken of the amount due your orator and the other judgment creditors of the said defendant bank who have been made parties to this proceeding by interpleader or otherwise, and that your orator's said judgment be decreed to be a first lien upon all the moneys, property, and effects of the said bank discovered by this proceeding.

That an account be taken of the amounts due from each of the said defendants to your orator and the judgment and the creditors of the said bank, as stockholders thereof, upon the basis of the number of shares of stock held by them at the time the said bank suspended payment in the manner as aforesaid, in pursuance of the provisions of the act under which the said bank was organized and by which the liability of the stockholders thereof is fixed and determined.

That a full and complete and accurate account be taken of all the sales, transfers, or surrenders or pretended sales, transfers, &c., of stock made by the said stockholders of the said bank or any of them after the same suspended payment in the manner as aforesaid and of the amounts received by them respectively for any such sales, transfers, &c., and that they may be decreed to hold the same in
trust for the creditors of said bank in the manner as herein-
22 before prayed, and that upon such accounts being taken the
said defendants, or such of them as shall be found liable to your orator and the judgment and other creditors of the said bank upon the said stock liability created by the said bankruptcy act, and such of them as shall be liable for the amounts received by them for the sales and transfers of stock so made by them in the manner as aforesaid, be decreed to pay whatever amounts shall be found to be due from them and each of them respectively into court or to the receiver duly appointed by said court, and that out of the fund so created your orator's judgment be paid in full, and the balance thereof be distributed among the other creditors of said bank in such way and manner as your honors shall direct.

That the said defendants and each of them be enjoined and restrained from in any way or manner selling or disposing of the said shares of stock of the said bank now held by them, or the certificates representing the same.

That the said defendants and each of them be compelled to full, just, and perfect answer make to this your orator's amended bill, and that under their respective oaths they make full and complete answer to the interrogatories hereinbefore set forth, and that they make full, complete, and perfect discovery of all their acts and doings with and concerning the said bank and the capital stock thereof and of the number of shares of stock held by them and each of them at the time the said bank suspended payment in the manner as
aforesaid, and of the pretended sales and transfers of such
23 stock after said time, and of the moneys, property, and effects
received for the same upon such sales and transfers.

May it please your honors to grant unto your orator the people's writ of injunction, issuing out from and under the seal of this honorable court, directed to the said defendants and each of them, their counselors, attorneys, trustees, solicitors, and agents, therein and thereby commanding and strictly enjoining the said defendants and each of them in the manner as aforesaid.

And may it please your honors to grant unto your orator a writ of subpœna, issuing out from and under the seal of this honorable court, directed to the said defendants, Manufacturers' National Bank, Ira Holmes, Thomas Lord, Mrs. A. E. Canfield, William H. Adams, E. M. Moffett, William A. Butters, E. A. Sowles, David Sinton, Charles Osborn, Monroe Heath, William F. Milligan, Alonzo Richmond, W. W. Crapo, Rufus P. Williams, Laura A. Bushnell, Charles Comstock, Edward Leonard, Morris Merrill, William M. Tilden, Silas B. Cobb, Marshal Field, H. P. Stanley, C. Hutchinson, William G. E.

Pope, Swayne Wickersham, Joseph L. McDuffee, John N. Gage, Stephen T. Field, William L. Fawcett, Milford D. Buchannan, Gill W. Peaslee, Thomas D. Snyder, Joseph A. Holmes, Charles E. Ray, William C. Whitney, Nancy Hannah, and Edgar Holmes, and each of them, therein and thereby commanding them and each of them, on a day certain therein named, to personally be and appear before the judges of this honorable court, and then and there to full, just, and perfect answer make to all and singular the allegations in your orator's amended bill, as hereinbefore prayed, and to stand to, abide by, and perform such order and decree therein as to your honors shall seem agreeable to equity and good conscience; and your 24 orator prays for such other and further relief in the premises as to your honors shall seem meet and equity require.

And your orator will ever pray, &c.

JAMES IRONS,
By ANDREW H. FOSKETT,
His Attorney-in-Fact.

GARDNER AND SCHUYLER,
Sol'rs for Complainant.

GEO. GARDNER, *Of Counsel.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Andrew H. Foskett, being duly sworn, deposes and says that he is the agent of James Irons, the complainant in said bill of complaint and amendment thereto; that he has read the foregoing amendment to said bill and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

ANDREW H. FOSKETT.

Subscribed and sworn to before me this 4th day of October, 1876, by Andrew H. Foskett.

JOHN A. HINCKLEY,
[SEAL.] *Notary Public, Cook County, Illinois.*

Endorsed: Filed Oct. 5th, 1876. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 13th day of December, 1878, came Charles Comstock, by his solicitor, and filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

25 United States Circuit Court, Northern District of Illinois.

James Irons
vs.
The Manuf'rs' Nat'l Bank of Chicago and Ira Holmes.

The separate answer of Charles Comstock, one of the defendants, to the bill of complaint in the above-entitled cause.

Now and at all times hereafter saving and reserving to himself all and all manner of benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, for answer thereto or unto so much thereof as he is advised is or are material or necessary for him to answer unto, answering, says—

That he admits that the Manufacturers' National Bank was a corporation organized under and pursuant to the laws of the United States, as set forth in the complainant's bill of complaint, but at what time it was so organized he is not informed except by the allegations of said bill. He admits that the capital stock was $500,000, or thereabout, and consisted of 5,000 shares of the par value of $100 each; that at, on, or about the twenty-second day of September, 1873, the said bank suspended payment, closed its doors, and ceased to transact the ordinary business of banking, but whether said bank was at that time or prior thereto insolvent and unable to pay its debts or has ever since continued so to be or is now so insolvent and unable to pay its debts he is unable to state. He says that he is informed by the original bill in this cause that at the time of
26 the suspension of said bank and thereafter there were assets
of said bank sufficient to pay the liabilities thereof. Whether the said complainant was at any time a depositor of said bank or a creditor thereof for any amount, or whether he has recovered a judgment against said bank in any court, or, if any such judgment was obtained, whether any execution was issued thereon and was returned unpaid, this defendant is not informed except by said amended bill.

This defendant, further answering, admits, upon information and belief, that the said bank went into voluntary liquidation, but whether in pursuance of the said banking act he is — informed, but believes it was done by Ira Holmes as president of said bank for the purpose of settling with its creditors and closing up its affairs, but whether the same was done with the approbation of the stockholders and directors or either of them or was accepted by them or acquiesced in or ratified by them or any of them he is unable to state except as to himself. He did not in any manner accept or ratify the action in that regard. This defendant, further answering, admits that a large amount of indebtedness has been settled by said defendant, Ira Holmes, acting as president of said bank, but how much he is unable to state, and how much indebtedness remains unpaid he is uninformed except by the said bill.

This defendant further admits that at the time of said suspen-

sion of said bank the paid-up capital of the said bank was
27 $500,000, represented by 5,000 shares of stock of the par value
of $100 per share. Whether any receiver of the effects of said bank was ever appointed by the Comptroller of the Currency of the United States or whether any application was ever made to the said Comptroller for the appointment of a receiver or if none was appointed the reason therefor he is unable to state.

This defendant, further answering, admits that — the time of the said suspension he was the owner and holder of certain shares of capital stock thereof; that previous to about ——, in the year 1872, he was the owner of one hundred and fifty shares of said stock; that on or about the 8th day of February, 1873, this defendant sold, assigned, and delivered fifty shares of the said stock to Ira Holmes and in or about June, 1873, this defendant sold, assigned, and delivered fifty other shares of said stock to Preston C. Maynard; that he endeavored repeatedly to have said stock transferred on the books of the bank, but that said Maynard refused to allow said stock to be so transferred, although he had before promised to have the same transferred.

That at the time of the said several sales of stock as aforesaid the said banking association was carrying on its regular business of banking and was, in fact, solvent and fully able to pay its debts and, as he is informed and believes, not indebted to any of the present creditors of said bank; that afterwards, on or about the 23d day of
September, 1873, this defendant sold, assigned, and delivered
28 to the said Ira Holmes his other fifty shares of stock in said
bank, with other property, receiving in payment therefor and for the other property sold to said Holmes at the same time certain promissory notes of one Wm. Patrick, payable to the said Ira Holmes, and was secured, with certain other notes, by a mortgage from said Wm. Patrick to said Ira Holmes; which said notes and mortgage have proved to be of little value to this defendant in consequence of the incumbrances and taxes upon said property and the expense of foreclosing; and how much of the value of said notes and security should be attributable to the consideration of this sale of said stock this defendant is unable to state, but he insists that at the time of said sale to said Holmes this defendant was informed and believed said bank was able to pay all its debts in full, and the consideration received by him was paid by said Holmes out of his individual property and not from the assets or property of said bank.

In answer to the interrogatories in said amended bill contained, this defendant, answering, says:

1st. To the first of said interrogatories he says that he is not informed and is unable to state at what time said bank was organized; that Ira Holmes was president and J. A. Holmes cashier of said bank on the 22d day of September, 1873; that at the same date M. D. Buchannan was vice-president; that this defendant was a director, as were also William H. Adams, Wm. M. Tilden, J. A. Holmes, Ira Holmes; that the above-named directors were stockholders, and Alonzo Richmond, Thomas Lord, Mrs. Canfield, S. B. Cobb were also stockholders, and this defendant does not now remember any other of said officers, directors, or stockholders.

29 2nd. To the second of said interrogatories he says that the said bank suspended payment during September, 1873; that he has no knowledge as to what action, if any, was taken by the officers, directors, and stockholders thereof in relation thereto or as to what meetings, if any, were held, or as to the time or place or persons present at such meetings, or as to what was done thereat.

3rd. To the third of said interrogatories he says that no meetings were held, to his knowledge, before said bank went into voluntary liquidation, and that he has no knowledge of any action having been taken in regard thereto by the officers, stockholders, or directors of said bank.

4th. To the fourth of said interrogatories he says that he has no knowledge as to the exact date when said bank went into voluntary liquidation, and that he knows no change of officers, directors, and stockholders between said date and the date referred to in answer to interrogatory No. one, except that he has sold his stock and ceased to be a director.

5th. To the fifth of said interrogatories he says that he has not knowledge as to when it first came to the knowledge of the officers and directors and stockholders of said bank that the same was insolvent and would be compelled to suspend payment, if such facts ever did come to their knowledge, except that he says that he is informed by the allegations of said original bill that said bank never was insolvent, and that he was not informed that said bank had suspended until after such step had been taken.

30 6th. To the sixth of said interrogatories he says that he has no knowledge as to what, if any, transfers or sales of stock were made after the said bank suspended payment or as to the time or place of or parties to or consideration for such transfers or sales, if any such there were, except as hereinbefore stated.

7th. To the seventh of said interrogatories he says that he has no knowledge as to any transfers or sales of stock, if any were made, after the said bank went into voluntary liquidation or as to the time or place of or parties to or consideration for such transfers or sales, if any such there were.

8th. To the eighth of said interrogatories he says that he has no knowledge that any meeting of the officers, directors, or stockholders of said bank was held after the same had suspended payments, or if any such meeting was held what, if any, talk or discussion was had thereat.

9th. To the ninth of said interrogatories he says that he has no knowledge as to whether the transfers or sales of stock made after the said bank suspended payment were made to the defendant, Ira Holmes, or to any one in his interest or as to who paid for the same or the manner of such payment, if any such transfers or sales were made, except as hereinbefore stated.

10th. To the tenth of said interrogatories he says that he has no knowledge as to whether any stock sold after the bank suspended payment was transferred on the books of the bank, except as hereinbefore stated.

11th. To the eleventh of said interrogatories he says that he has
no knowledge as to whether the stock held by stockholders of
31 said bank at the time of said suspension was paid up in full,
except as to that which he himself owned, which he alleges to
have been full-paid stock.

12th. To the twelfth of said interrogatories he says that — has no knowledge as to who are stockholders of said bank at the present time or as to how many shares of stock are held by stockholders or either or any of them, respectively.

13th. To the thirteenth of said interrogatories he says that he has no knowledge for what purpose the stockholders of said bank made or pretended to make the sales or transfers of stock made by them at the time the said bank suspended payment or after that time, if any such were made or pretended to be made, except that as to the sale made by himself he says that the same was a *bona fide* sale made at the request of said Ira Holmes to said Holmes in person, and that, to the best of his information and belief, the consideration received therefor was the property of said Holmes individually.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, as to so much of said bill as seeks a discovery from this defendant as to the amount of stocks of said bank owned by this defendant at any time and to so much of said bill as seeks relief from this defendant upon his alleged liability on said stock, demurs
thereto, and for cause of such demurrer shows that in the origi-
32 nal bill filed in this cause no such prayer for relief was made
nor was any relief asked in said original bill against any
party thereto based upon any alleged liability on said stock; but this defendant shows that the prayer for relief in said original bill against the parties defendant thereto was alleged to be because said parties were possessed of or had under their control assets of the said bank, which assets the said original bill alleged to be in existence; and complainant further prayed for a receiver to be appointed, with the usual power of receivers in like cases, of all the property, equitable interests, things in action, and effects of the said defendant, the said bank, and of the said Holmes in which said bank was in any way interested, and this defendant shows that in pursuance of such prayer of said original bill Joel D. Harvey was appointed a receiver of said bank, and the said Harvey took possession of the effects of said bank as such receiver, and that the said Harvey has not fully collected up or exhausted the assets of said bank.

And this defendant further shows that in order to support the said prayer for relief against the alleged stockholders in said bank the complainants, in the amendment to said original bill, charge that the bank is and was for a long time before its suspension insolvent, whereas in the original bill of complaint the complainant alleged and founded his prayer for relief upon the fact that there were assets of said bank in the possession or under the control of the parties defendant thereto exceeding in amount the liabilities of said bank, and this defendant shows therefore that in this respect the amendment to the said original bill is inconsistent to and 33 differing from in its nature the case made out in the original bill, wherefore he prays the judgment of this honorable court whether he shall make any further or other answer to such part of said original bill as is hereby demurred to.

Without this, that any other matter, cause, or thing in the said complainants' bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CHARLES COMSTOCK.

H. B. Hurd, defendant's sol'r:

I certify that, in my opinion, the foregoing demurrer of Charles Comstock, defendant, to the bill of complaint of James Irons, complainant, is well founded in law and proper to be filed in the above cause.

H. B. HURD,
Def't's Sol'r.

34 UNITED STATES OF AMERICA,
State of and Northern District of Illinois, } *ss:*

Charles Comstock, being duly sworn, says that he is the defendant named in the above answer to the bill of complaint of James Irons against the Manufacturers' National Bank of Chicago and Ira Holmes, in the circuit court of the United States for the northern district of Illinois, as answering thereto; that he has heard read the interrogatories in said bill contained and the answers thereto herein contained, and that said answers are true to the best of the knowledge, information, recollection, and belief of this defendant; and deponent further says that he has heard read the demurrer to part of said bill herein contained, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

CHARLES COMSTOCK.

Subscribed and sworn to before me this 13th day of December, 1878.

[SEAL.] FRANK H. SCOTT,
Notary Public in and for Cook County, Illinois.

Endorsed: Filed Dec. 13, 1878. Wm. H. Bradley, clerk.

35 Afterwards, to wit, on the sixth day of May, 1879, came the complainants, by their solicitors, and filed in said clerk's

office their replication to the answer of Charles Comstock and others in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

In the United States Circuit Court of the Northern District of Illinois. May Term, A. D. 1879.

IRONS *et al.*
vs.
MANUFACTURERS' NAT. B'K *et al.*
} In Chancery.

The replication of the complainants to the several answers of Thomas Lord, Wm. H. Adams, Chas. Comstock, Morris Merrill, Silas B. Cobb, Charles Hutchinson, Alonzo Richmond, William M. Tilden, Marshall Field, Joseph L. McDuffee, John N. Gage, Monroe Heath, William F. Milligan, Charles E. Ray, Wm. C. Whitney, Swayne Wickersham, William Fawcett, and Gill W. Peaslee.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto say that they will aver, maintain, and prove their bill 36 of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

GARDNER & SCHUYLER AND
MATTOCKS & MASON,
Solicitors for Complainant.

(Endorsed:) Filed this 6th day of May, A. D. 1879. W. H. Bradley, clerk.

37 Afterwards, to wit, on the seventh day of May, in the adjourned May term of said court, 1879, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JAMES IRONS *et al.*
vs.
THE MANUFACTURERS' NATIONAL BANK *et al.*
} In Chancery.

On this day come said complainants, by their solicitors, Mattocks

& Mason, and move the court that said defendants, Charles Osborne, Mrs. A. E. Canfield, The Manufacturers' National Bank, William A. Butters, Joseph A. Holmes, Edward Leonard, and Thomas D. Snyder, be severally called to appear and make answer to the amended bill herein, and that in default thereof their several defaults be entered herein and said bill be taken as confessed by them and each of them; and it appearing to the court that process of subpœna in chancery was duly issued in this cause against all said defendants, and that each and both of said defendants, Edward Leonard and Thomas D. Snyder, were duly and personally served with such subpœna herein more than twenty days prior to the rule day in March, A. D. 1879, and have not nor has any of them appeared or 38 made answer herein; and it further appearing that said defendants, Charles Osborne, Mrs. A. E. Canfield, The Manufacturers' National Bank, William A. Butters, and Joseph A. Holmes, by their respective solicitors, duly entered their appearances in writing in this cause prior to the rule day on the first Monday of March, A. D. 1879, but have not since, nor has any of them, further appeared or made answer herein according to the rules and practice of this court in that behalf, it is ordered and decreed by the court that each and all of said defendants, Charles Osborne, Mrs. A. E. Canfield, The Manufacturers' National Bank, William A. Butters, Joseph A. Holmes, Edward Leonard, and Thomas D. Snyder, come into court here and plead, answer, or demur to the said amended bill *instanter;* and said defendants, being now severally three times solemnly called so to come and plead, answer, or demur herein, come not, but each and all make default in that behalf; and thereupon it is so ordered, adjudged, and decreed by the court that as to them and each of them the said bill be taken as confessed; and it is further, on motion of said complainants' solicitors, ordered by the court that this cause be referred to Henry W. Bishop, Esq., master in chancery of this court, to take proofs herein and report the same to the court.

39 Afterwards, to wit, on the first day of March, 1882, came Joseph Penn, assignee of People's Bank of Belleville, by his solicitors, and filed in said clerk's office his petition in said entitled cause; which said petition is in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

Circuit Court of the United States for the Northern District of Illinois.

AGNES F. IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.*

To the honorable the judges of said court, in chancery sitting:

The undersigned respectfully represents unto this honorable court that he is a creditor of The Manufacturers' National Bank, defendant herein, and prays leave to make proof of his claim herein.

JOSEPH PENN,
Assignee of the People's Bank of Belleville,
By MASON BROTHERS,
His Solicitors.

HENRY B. MASON, *Of Counsel.*

(Endorsed:) Filed March 1, 1882. Wm. H. Bradley, clerk.

40 On the same day, to wit, on the first day of March, 1882, in the December term of said court, 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AGNES F. IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } In Chancery.

Upon reading and filing the petition of Joseph Penn, assignee of the People's Bank of Belleville, it is ordered that the said petitioner have leave to prove his claim herein.

41 Afterwards, to wit, on the twenty-third day of July, in the July term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AGNES F. IRONS and ANDREW H. FOSKETT, Executrix and Executor of the Last Will and Testament of James Irons, Deceased,
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } In Chancery.

Now come the parties, by their respective solicitors, and by leave of court said complainants amend their amended bill herein so as to show that the same is filed in behalf of said complainants and all other creditors of said bank, and the prayer of said amended bill is also amended to correspond with said amendment, and that defendants have leave to answer said amendment *instanter;* and this cause coming on to be heard upon the bill, amended bill, and amendments thereto, and being taken as confessed as to the defendants, Charles Osborne, Mrs. A. E. Canfield, Manufacturers' National Bank, William A. Butters, Joseph A. Holmes, Edward Leonard, and
Thomas D. Snyder, and upon the answers of the defendants,
42 Charles E. Ray, William C. Whitney, Monroe Heath, William
F. Milligan, Marshall Field, William M. Tilden, Joseph L. McDuffee, Thomas Lord, Charles Hutchison, Silas B. Cobb, John N. Gage, Morris Merrill, Alonzo Richmond, Charles Comstock, Gill W.

Peaslee, and William L. Fawcett, and the replications to the aforesaid answers and upon the pleas of discharges in bankruptcy of the defendants, Ira Holmes, Milford D. Buchanan, William G. E. Pope, and Edgar Holmes, taken as confessed, and upon the proof taken and filed in said cause, and having been argued by the counsel for the respective parties, the court being fully advised in the premises, doth find that it hath jurisdiction of the subject-matter and the parties, and that the material allegations of the bill of complaint as amended are true, and the court doth further find that the said defendant, Manufacturers' National Bank of Chicago, was an association duly organized and doing business under the national banking act; that it became insolvent and suspended payment September twenty-third (23), 1873, and in pursuance of the said act went into voluntary liquidation on September twenty-sixth (26th), 1873; that debts of the bank are still due and unpaid; that at the time of the bank's insolvency and suspension of payment the capital stock of said bank consisted of five thousand (5,000)
shares of the par value of one hundred ($100) dollars each,
43 and that the following persons were shareholders in said
bank, and each owned the number of shares hereinafter set opposite their respective names, viz: Thomas Lord, eighty (80) shares; Mrs. A. E. Canfield, twenty-four (24) shares; William H. Adams, two hundred and forty (240) shares; Laura D. Bushnell, fifty (50) shares; Charles Comstock, one hundred and fifty (150) shares; Nancy Hannah, ten (10) shares; Alonzo Richmond, one hundred (100) shares; Edward Leonard, ten (10) shares; Morris Merrill, eight (8) shares; Edgar Holmes, one thousand (1,000) shares; William M. Tilden, eighty (80) shares; Ira Holmes, one thousand eight hundred and thirteen (1,813) shares; Silas B. Cobb, fifty (50) shares; Marshall Field, fifty (50) shares; H. P. Stanley, fifty (50) shares; Charles Hutchison, fifty (50) shares; E. M. Moffett, fifty (50) shares; Charles E. Ray and William C. Whitney, in common, one hundred (100) shares; William A. Butters, ten (10) shares; E. A. Sowles, twenty-five (25) shares; Monroe Heath and William F. Milligan, in common, twenty (20) shares; William G. E. Pope, fifty-five (55) shares; Swayne Wickersham, sixty (60) shares; Joseph L. McDuffee, fifty (50) shares; John N. Gage, fifty (50) shares; Stephen T. Field, fifty (50) shares; David Sinton, fifty-five (55) shares; William L. Fawcett, fifty (50) shares; Milford D. Buchanan, fifty (50) shares;
Charles Osborne, ten (10) shares; Gill W. Peaslee, fifty (50)
44 shares; Thomas D. Snyder, fifty (50) shares, and Joseph A.
Holmes, five hundred (500) shares; that after the said bank had become insolvent and suspended payment certain shareholders of said bank transferred the stock held by them, but that all and each of such transfers were and are in derogation of the rights of creditors and were and are invalid, and the court doth further find that the following defendants, shareholders of said bank, namely: Charles Osborne, Mrs. A. E. Canfield, William A. Butters, Joseph A. Holmes, Edward Leonard, Thomas D. Snyder, William L. Fawcett, Alonzo Richmond, Monroe Heath, William F. Milligan, Thomas Lord, Charles Hutchinson, John N. Gage, Morris Merrill, Charles

Comstock, Gill W. Peaslee, William M. Tilden, Charles E. Ray, William C. Whitney, Joseph L. McDuffee, Marshall Field, and Silas B. Cobb, are individually responsible equally and ratably and not one for the other for all contracts, debts, and engagements of said bank to the extent of the amount of stock standing in their names respectively on said twenty-third (23rd) day of September, 1873 (and before any transfers were made that day), at the par value thereof, in addition to the amount invested in such bank; and the court doth further find that the allegations in the pleas of bankruptcy of the defendants, Ira Holmes, Edgar Holmes, William G. E. Pope, and Milford D. Buchanan, are true.

45 And thereupon complainants suggest of record the death of defendant, William H. Adams, on the fifth day of June, A. D. 1882, and that Elizabeth Adams is the sole administratrix of his estate. It is therefore ordered, adjudged, and decreed that this cause proceed against the said Elizabeth Adams, administratrix, in place of the said William H. Adams, deceased, and that subpœna in chancery do issue against her. It is further ordered, adjudged, and decreed that the discharges in bankruptcy of the said defendants, Ira Holmes, Edgar Holmes, William G. E. Pope, and Milford D. Buchanan, barred and extinguished their stock liability, and that they have leave on the final hearing to move for a dismissal of the bill as to them for want of equity. It is further ordered, adjudged, and decreed that the petitions of the said Ira Holmes, Edgar Holmes, and Milford D. Buchanan, filed as of June thirtieth, 1883, be, and the same are hereby, dismissed. It is further ordered, adjudged, and decreed that the transfers of stock in said bank made on or after September twenty-third (23rd), 1873, are in derogation of the rights of creditors of said bank and are null and void, and that the defendants, Charles Osborne, Mrs. A. E. Canfield, William A. Butters, Joseph A. Holmes, Edward Leonard, Thomas D. Snyder, William L. Fawcett, Alonzo Richmond, Monroe Heath, William F.
46 Milligan, Thomas Lord, William H. Adams, Charles Hutchinson, John N. Gage, Morris Merrill, Charles Comstock, Gill W. Peaslee, William M. Tilden, Charles E. Ray, William C. Whitney, Joseph L. McDuffee, and Silas B. Cobb, were and are, so far as the rights of creditors of said bank are concerned, owners of the shares of stock in said bank standing in their respective names on the books of said bank on the twenty-third day of September, 1873, and before any transfers were made that day. It is further ordered, adjudged, and decreed that this cause be referred to Henry W. Bishop, Esquire, master in chancery, to take proof and report, first, the amount of the debts of said bank still unpaid and the amount due each creditor thereof; second, the value of the assets, if any, of the bank; third, the amount of assessment necessary to be made on each share of the capital stock of said bank in order to fully pay the indebtedness of the bank, and he shall also report the amount due and payable from each shareholder upon such assessment.

47 Afterwards, to wit, on the fifth day of January, 1884, in the December term of said court, 1883, in the record of the

proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AGNES F. IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } In Chancery.

It appearing to the court that the testimony under the pending order of reference to Henry W. Bishop, Esquire, master in chancery, should be completed at a time certain, it is ordered by the court that the time for introducing testimony-in-chief in support of claims entitled to share in the fund to be derived from enforcing the liability of stockholders of the Manufacturers' National Bank shall expire on the first day of February, A. D. 1884, and that all claims of every kind, nature, and description against such fund not already introduced in evidence or which shall not be introduced in evidence prior to the first day of February, A. D. 1884, shall be forever barred, but claims presented within said time shall be subject to all objections and defenses. It is further ordered by the court that the defendants and all other persons interested or claiming to be interested in opposing any such claim or claims 48 shall have until and including the first day of March, A. D. 1884, to introduce testimony against such claim or claims, and that a further time expiring April first, A. D. 1884, shall be allowed for the introduction of testimony in rebuttal, and that thereupon the proofs shall be closed, and the master shall with all convenient speed make his report. It is further ordered that a copy of this order be published for four successive weeks, once a week, in the Chicago Legal News.

49 *Testimony of Ira Holmes on First Reference.*

Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 4th day of December, A. D. 1879.

Present: Israel Holmes, Esq., solicitor for claimant, and Mattocks & Mason, solicitors for receiver and complainants.

Mr. HOLMES: I offer in evidence a paper, of which the following is a copy:

(EXHIBIT 52.)

"CHICAGO, *October* 15, 1873.

"Twelve months after date, acceptance waived, pay to the order of J. A. Holmes, cashier of the Manufacturers' Nat'l Bank of Chicago, Ills., thirty-three hundred dollars, value received, and charge to the account of Ira Holmes.

"$3,300.00.

"NAT. PARK BANK, N. Y."

On the back of which is the following:

"Pay to John V. Daniels or order. Manufacturers' Nat. Bank of Chicago, Ills. J. A. Holmes, cashier."

Also the following instrument in writing:

(Ex. 53.)

"CHICAGO, *July* 15, 1874.

"Ninety days after date I promise to pay to the order of myself thirty-three hundred dollars, at 31 Monroe street, Chicago, value received, with interest at ten per cent. after maturity.

"IRA HOLMES."

On the back of which is the following:

"Manufacturers' Nat. Bank, by Ira Holmes, p't. Pay to John V. Daniels or order. Ira Holmes."

In connection with this I offer as a witness—

Mr. IRA HOLMES, who, being duly sworn, testified as follows:

Q. Mr. Holmes, are you the Ira Holmes whose name appears on the papers just read?

A. I am.

Q. State whether you are the Ira Holmes whose name is signed to these papers and on the back of one of them. Is that your signature?

A. Yes, sir.

Q. State what relation, if any, you held at the time these papers were made and delivered to the Manufacturers' National Bank.

A. I was at that time president of the Manufacturers' National Bank.

Q. And the general manager of its affairs?

A. Yes, sir.

Q. Will you state what position J. A. Holmes, whose name is in one of these papers, held?

A. He was the cashier of the bank.

Q. Look at that instrument—"Ira Holmes, p't"—and say what p't stands for?

A. President.

Q. President of that bank?

A. Yes, sir.

Q. Look at the abbreviation after the endorsement of J. A. Holmes.

A. That is cashier.

Q. That was the ordinary mode in which he indicated his official character?

A. Yes, sir.

Q. Will you state what these papers were given for?

A. Originally they were given in payment of a deposit account with the bank of which Mr. Daniels was president or cashier; I don't know which—president, I think.

Q. Was anything said at the time whether they were in payment or simply security?

A. They were in payment of the deposit.

Q. Mr. Holmes, have you any objections to stating what your financial condition was in October, 1874, as to solvency?

A. My impression is that I was insolvent in October, 1874.

Q. So that an execution could not have been collected of you?

A. I think that was my condition. I know shortly after that I
was—I don't know whether I was or not, but that is my im-
51 pression. In 1875, I think it was, that I went into bank-
ruptcy, and I think in the fall of 1874 I gave up the ghost
financially. If I had not been insolvent I should have paid.

Cross-examination by Mr. Mason:

Q. Will you state, Mr. Holmes, at the time of the panic in 1873, whether or not you had united your resources with those of the Manufacturers' National Bank?

A. I exhausted my private fortune in trying to protect the bank, and if the bank had gone through all right I would have been solvent and more than solvent, but as it did not go through I was not.

IRA HOLMES.

Subscribed and sworn to.

H. W. BISHOP,
Master in Ch'y, C'r. C't U. S., Nor. Dist. Illinois.

Solicitor for John V. Daniels here offered in evidence certified copy of Ira Holmes' discharge in bankruptcy, marked Exhibit 54.

District Court of the United States, Northern District of Illinois.

Whereas Ira Holmes, of Chicago, in the county of Cook, in said district, has been duly adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf:

It is therefore ordered by the court that said Ira Holmes be forever discharged from all debts and claims which by said act are made provable against his estate and which existed on the third day of November, A. D. eighteen hundred and seventy-five, on which day the petition for adjudication was filed by him, Ira Holmes, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of said court, at Chicago, in the said district, this second day of March, A. D. eighteen hundred and seventy-seven.

[SEAL.]

H. W. BLODGETT, *Judge.*
WM. H. BRADLEY, *Clerk.*

52 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete copy of the discharge issued in the matter of Ira Holmes, bankrupt, in bankruptcy, as appears from the records and originals now in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this second day of December, A. D. 1879.

WM. H. BRADLEY, *Clerk.* [SEAL.]

Endorsed: Filed Jan. 18, 1883. Wm. H. Bradley, clerk.

53 Afterwards, to wit, on the sixth day of January, 1885, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois.

IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } In Chancery.

To the honorable the judges of said court:

The above-entitled cause having been referred to me as master in chancery of the said court by the interlocutory decree heretofore, to wit, July 23rd, 1883, entered herein, directing me to take proof and report—

First. The amount of the debts of said bank still unpaid and the amount due each creditor thereof.

Second. The value of the assets, if any, of the bank.

Third. The amount of assessment necessary to be made on each share of the capital stock of said bank in order to fully pay the indebtedness of the bank, and the amount due and payable from each shareholder upon such assessment.

54 I do hereby report that due written notice of the time and place of taking testimony under said reference was given by me to the solicitors in this cause, and that thereupon I was attended on the 19th day of December, 1883, by D. J. Schuyler and Henry B. Mason, Esquires, of counsel for the receiver and creditors, and by Rufus King and C. A. Knight, Esquires, of counsel for individual creditors, and by Henry G. Miller and H. B. Hurd, Esquires, of counsel for stockholders, and that thereupon testimony was taken, and that by successive adjournments the taking of testimony was continued on the 26th, 29th, and 31st days of January, the 7th, 18th, and 25th days of February, all in the year 1884, and

completed on the 30th day of April, 1884; and that upon the said last-mentioned seven days I was attended by the said D. J. Schuyler and Henry B. Mason, Esquires, of counsel for the receiver and creditors, and by Henry G. Miller and H. B. Hurd, Esquires, of counsel for stockholders, and I return herewith the testimony and exhibits introduced in evidence before me at such original and adjourned hearings.

And I do further report that the issues under said reference were argued before me by the said D. J. Schuyler and Henry B. Mason, Esquires, of counsel for receiver and creditors, and by the said Henry G. Miller and H. B. Hurd, Esquires, and Melville W. Fuller, Esquire, of counsel for stockholders.

Upon consideration of which I find and report—

55 First. The amount of the debts of said bank still unpaid upon the first day of November, 1884, and the amount due each creditor thereof at said date, as set forth in a paper attached to this report and made a part hereof and marked Schedule "A." This schedule gives the name of each creditor and opposite his name the amount due him at the date last aforesaid, and the footing shows the total amount of the debts of said bank still unpaid to be the sum of $368,971.50 at the date last aforesaid. All the claims mentioned in Schedule "A" are shown by the testimony to be valid and subsisting debts of the said bank due and unpaid, and the stockholders of said bank are liable for the payment thereof, except such stockholders as have received discharges in bankruptcy.

Second. There are no assets of the bank outside of stockholders' liability.

Third. The amount of assessment necessary to be made on each share of the capital stock of the Manufacturers' National Bank in order to fully pay the indebtedness of said bank and the amount due and payable from each shareholder upon such assessment are stated in a paper attached to this report and made a part hereof and marked Schedule "B." This schedule gives the name of each stockholder and opposite his name the number of his shares of stock in said bank, the par value thereof, the per cent. of assessment to be levied thereon, and the amount due and payable 56 from him upon such assessment. It would require an assessment of 90 per cent. upon each share of the capital stock of said bank in order to fully pay the indebtedness of the bank. Class "A" of Schedule "B" embraces those stockholders who have been duly served with process or entered their appearance in this cause, and as to whom a final decree can now be entered; class "B" of this schedule embraces those stockholders who have obtained a discharge in bankruptcy, and are therefore not liable to stock assessment; class "C" of this schedule embraces those stockholders who reside outside the northern district of Illinois and have not been found in said district.

I do further report that I have been requested by counsel for defendant stockholders to classify the debts of the bank, and a classification of such debts has been submitted to me by said counsel with

a view to its adoption by me and incorporation into this report. I find it is proper, for the sake of convenience in the argument and decision of this cause, that claims of a similar kind should be grouped together under the same head, but I find that the classification submitted to me is not supported by the proof in this cause, but I herewith report said offer to the court, making a classification of the claims, which is hereto attached, marked Schedule "C" and made a part of this report. In Schedule "C," class "A" embraces clerical services rendered the bank, and amounts to
57 $183.31; class "B" embraces some past services of the receiver and his attorneys and aggregate- $4,437.04; class "C" embraces claims arising before the failure of the bank and upon which no collaterals were taken, and it aggregates $179,231.81; class "D" embraces claims arising before the failure of the bank & upon which worthless collaterals were subsequently received, and it aggregates $185,119.34.

In the examination of this case and preparation of report I have regarded all substantial questions raised by the pleadings as having been settled and disposed of by the decree of the court. I do not deem it necessary or proper, therefore, to refer to such portions of the arguments of counsel as were directed to matters outside of this reference, but have limited my findings strictly to the directions of the interlocutory order requiring from me a statement of account upon the basis of the findings of the court.

I return herewith the testimony taken upon this reference, together with the exhibits offered and used in connection therewith.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated January 2nd, 1885.

58 *Schedule of Creditors of Manufacturers' National Bank and of Amounts Due Them November* 1, 1884.

* * * * * * *

Item 44, Schedule "A:"

44.	Joseph Penn, assignee People's Bank of Belleville.	$84,103 48

* * * * * * *

59 *The Evidence (Notes, etc.) in Support of Claim of People's Bank.*

Mason Brothers, as attorneys for Joseph Penn, assignee of the People's Bank of Belleville, introduce in evidence Exhibit 55, certified copy of assignment of that bank to Joseph Penn, dated April 2, 1878.

Mason Brothers, as attorneys for Joseph Penn, assignee of the People's Bank of Belleville, introduce in evidence—

EXHIBIT 56.

Certified Copy Judgment-Roll.

United States Circuit Court.

PEOPLE'S BANK OF BELLEVILLE
vs.
MANUFACTURERS' NATIONAL BANK.

Declaration. Indorsee *vs.* guarantor, and common counts. Notes and account sued on.

Face of first note:

$5,000. CHICAGO, *August 5th*, 1873.

One year after date I promise to pay to the order of myself five thousand dollars, at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with ten per cent. per annum interest after maturity, value received.

HENRY E. PICKET.

This note is secured by trust deed.

Back of first note:

Henry E. Picket pay to the order of A. G. Badgley, cas.

M. D. BUCHANNAN,
Vice-Pres't Man'f's' Nat'l Bank of Chicago.

Face and back of other seven notes same as face and back of first note.

Manufacturers' National Bank of Chicago to the People's Bank of Belleville, Dr.

To money, $80,000; to money paid and expended, $80,000; to money received, $80,000; to interest, $80,000.

Letter.

CHICAGO, *Aug. 8th*, 1873.

A. G. Badgley, Esq., cashier:

In accordance with your telegram of this date I herewith hand
you ten notes of $5,000 each, Henry E. Picket, dated 5th August,
1873, ten per cent. semi-annually, $50,000. We debit your account
$50,000. This bank hereby guarantees the prompt payment
60 of the principal sum and interest at maturity of said notes.
The trust deed securing said notes has been filed for record,

and as soon as recorded I will forward same to you. Please return to me note of Sherman, $15,000, enclosed in our letter of 6th inst., and we will credit same on your account.

M. D. BUCHANAN, *Vice-Pres't.*

Judgment for plaintiff against defendant May 31, 1880, $67,277.00.

Bank ledger account, People's Bank, Belleville, Ill.

Amount on deposit Sep. 22, 1873, $21,480.86; subsequent entries to credit said account Sep. 24, 1873, $569.10; subsequent entries to debit of said account Sep. 23, 1873, $850; Sep. 25, 1873, $78.70; Oct. 1, 1873, $142.66; Oct. 14, 1873, $20,978.60. Account balanced.

* * * * * * *

61 *Affidavit of Claim of People's Bank.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court of the United States for the Northern District of Illinois.

AGNES F. IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } In Chancery.

STATE OF ILLINOIS,
County of St. Clair, } *ss:*

Joseph Penn, assignee of the People's Bank of Belleville, being duly sworn, states on oath that he is assignee of the People's Bank of Belleville, and that the Manufacturers' National Bank of Chicago is justly indebted to said People's Bank of Belleville in the principal sum of $67,277.00, with interest thereon from May 31, 1880, at the rate of six (6) per cent. per annum, and that there are no collaterals or other securities in the matter of said indebtedness other than those introduced in evidence in this cause, and the same are subject to the order and disposition of the circuit court of the United States for the northern district of Illinois, and all means for obtaining payment of said indebtedness have been exhausted except
62 the enforcement of stockholders' liability. Affiant further says that he knows of no set-off or other legal or equitable defense to said claim or any part thereof.

(Name) JOSEPH PENN,
Assignee of the People's Bank of Belleville,
(Residence) *Belleville, Ill.*

STATE OF ILLINOIS,
County of St. Clair, } *ss:*

This is to certify that at the date of this certificate the foregoing affidavit was subscribed and sworn to before me by the person therein mentioned, and I do further certify that I am an officer authorized by the laws of the aforesaid State to administer oaths.

Witness my hand and notarial seal this 23 day of January, A. D. 1884.

[SEAL.] ALBERT G. BADGLEY,
Notary Public.

* * * * * * *

(Endorsed:) Filed Jan'y 6, 1885. Wm. H. Bradley, clerk.

63 Afterwards, to wit, on the first day of June, in the adjourned May term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

AGNES F. IRONS and ANDREW H. FOSKETT, Executrix and Executor of the Estate of James Irons, Deceased, *et al.*,
vs.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO *et al.*
} In Chancery.

This cause coming on for final hearing upon the bills of revivor and complaint and amendments thereto, and being taken as confessed as to the defendants, Charles Osborne, Mrs. A. E. Canfield, Manufacturers' National Bank, William A. Butters, Joseph A. Holmes, Edward Leonard, and Thomas D. Snyder, and upon the amended answers of the defendants, Charles E. Ray, William C. Whitney, Monroe Heath, William F. Milligan, Marshall Field, William M. Tilden, Thomas Lord, Charles Hutchinson, Silas B. Cobb, John M. Gage, Morris Merrill, Alonzo Richmond, Charles Comstock, Gill W. Peaslee, and William L. Fawcett, and the replications to the aforesaid answers, and upon the pleas of discharges in bankruptcy of the defendants, Ira Holmes, Milford D. Buchanan, William
64 G. E. Pope, and Edgar Holmes, taken as confessed, and upon the bill of revivor against William Henri Adams, administrator *de bonis non* of William H. Adams, deceased, and upon the demurrer thereto, which demurrer is overruled; and upon the bill of revivor against Andrew J. McDuffee and Rollin S. Williamson, executors of the last will and testament of Joseph L. McDuffee, deceased, and upon the demurrer thereto, which demurrer is overruled; and upon the proofs taken in said cause and upon the master's report filed herein and the exceptions hereto, and having been referred back to the master for recomputation of the amount due, with interest thereon at the rate of six (6) per cent. per annum, and the exceptions of all parties having been refiled to said last report, and additional exceptions having been filed thereto and the court having overruled each and all said exceptions (except in so far as the abovementioned recomputation has reduced the indebtedness allowed

against said bank, defendants' exceptions being sustained to that extent), and each party whose exceptions were overruled having severally excepted to such rulings, and this cause having been argued by the counsel for the respective parties, the court, being fully advised in the premises, doth reaffirm its conclusions of law and fact heretofore
entered of record on, to wit, July twenty-third (23d), in the year
65 of our Lord one thousand eight hundred and eighty-three
(A. D. 1883), in the interlocutory decree in this cause, and doth further find that the net amount due to the creditors of said bank, with interest thereon at the rate of six (6) per centum per annum from the time of the failure of said bank to May 21st, 1886, including the expenses of the receivership in this cause, amounts to the sum of four hundred and sixteen thousand and seventy-nine dollars and fourteen cents ($416,079.14), and that the resources of or pertaining to the bank outside of stock liability have been exhausted, and that the shareholders of said bank (except those discharged in bankruptcy) are individually responsible equally and ratably and not one for another for all the aforesaid indebtedness to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares, and that the estates and funds in the hands of William Henri Adams, administrator *de bonis non* of William H. Adams, deceased, and in the hands of Andrew J. McDuffee and Rollin S. Williamson, executors of the last will and testament of Joseph L. McDuffee, deceased, are respectively liable in like manner and to the same extent as the said William H. Adams and Joseph L. McDuffee, respectively, would be if each were living and competent to act and held the stock in his
own name, the aforesaid demurrers being overruled, and the
66 court finding that the said William Henri Adams, under and
by virtue of his appointment as administrator, possessed himself of the estate of said William H. Adams sufficient to answer every legal and equitable demand touching the matters in question in this cause relating to the shares of stock in said Manufacturers' National Bank owned by the said William H. Adams, and that the said Andrew J. McDuffee and Rollin S. Williamson, under and by virtue of their appointment as executors, possessed themselves of the estate of said Joseph L. McDuffee sufficient to answer every legal and equitable demand touching the matters in question in this cause relating to the shares of stock in said Manufacturers' National Bank owned by the said Joseph L. McDuffee, and that an assessment of eighty-three and two-tenths per cent. (83.2%) upon the capital stock of said bank would be necessary to meet the liabilities of said bank and the expenses of said receivership.

It is thereupon ordered, adjudged, and decreed that this bill be dismissed for want of equity as to the several defendants, Ira Holmes, Edgar Holmes, William G. E. Pope, and Milford D. Buchanan, by reason of the sufficiency of their respective discharges in bankruptcy pleaded herein.

It is thereupon severally ordered, adjudged, and decreed that the
said Charles Osborne do pay to Joel D. Harvey, the receiver
67 in this cause, for the benefit of all the creditors of said bank,

eight hundred and thirty-two dollars ($832.00) in sixty days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that the said Mrs. A. E. Canfield do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, one thousand nine hundred and ninety-six dollars and sixty cents ($1,996.60) in sixty days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that William A. Butters do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, eight hundred and thirty-two dollars ($832.00) in sixty days from the entry of this decree, with interest on said amount at the rate of six (6) per
68 centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Edward Leonard do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, eight hundred and thirty-two dollars ($832.00) in sixty days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Joseph A. Holmes do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, forty-one thousand six hundred dollars ($41,600.00) in sixty days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Thomas D. Snyder do pay to Joel D. Harvey, the receiver in
69 this cause, for the benefit of all the creditors of said bank, four thousand one hundred and sixty dollars ($4,160.00) in sixty days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that

William L. Fawcett do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, four thousand one hundred and sixty dollars ($4,160.00) in sixty days from the entry of this decree, with interest on said amount, at the rate of six (6) per centum per annum, from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Alonzo Richmond do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, eight thousand three hundred and twenty dollars ($8,320.00) in sixty days from the entry of this decree, with interest on said amount, at the rate of six (6) per centum per annum, from the entry of this decree down to the date of payment, and that upon default in payment
70 thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Monroe Heath and William F. Milligan, or one of them, do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, one thousand six hundred and sixty-four dollars ($1,664.00) in sixty days from the entry of this decree, with interest on said amount, at the rate of six (6) per centum per annum, from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor against the said Monroe Heath and William F. Milligan jointly and severally as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Thomas Lord do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, six thousand six hundred and fifty-six dollars ($6,656.00) in sixty (60) days from the entry of this decree, with interest on said amount, at the rate of six (6) per centum per annum, from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Charles Hutchinson do pay to Joel D. Harvey, the receiver
71 in this cause, for the benefit of all the creditors of said bank, four thousand one hundred and sixty dollars ($4,160.00) in sixty (60) days from the entry of this decree, with interest upon said amount, at the rate of six (6) per centum per annum, from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that John N. Gage do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, four thousand one hundred and sixty dollars ($4,160.00) in sixty days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Morris Merrill do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, six hundred and sixty-five dollars and sixty cents ($665.60) in sixty days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment
72 thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Charles Comstock do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, twelve thousand four hundred and eighty dollars ($1,248.00) in sixty days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Gill W. Peaslee do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, four thousand one hundred and sixty dollars ($4,160.00) in sixty (60) days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Charles E. Ray and William C. Whitney or one of them do
73 pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, eight thousand three hundred and twenty dollars ($8,320.00) in sixty (60) days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor against the said Charles E. Ray and William C. Whitney, jointly and severally, as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Andrew J. McDuffee and Rollin S. Williamson, executors of the last will and testament of Joseph L. McDuffee, deceased, do pay to the said Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, four thousand one hundred and sixty dollars ($4,160.00) in due course of administration, but not earlier than sixty (60) days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have proper process to enforce the collection thereof.

It is thereupon severally ordered, adjudged, and decreed that Marshall Field do pay to Joel D. Harvey, the receiver in this cause, for
the benefit of all the creditors of said bank, four thousand
74 one hundred and sixty dollars ($4.160.00) in sixty (60) days
from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged, and decreed that Silas B. Cobb do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all creditors of said bank, four thousand one hundred and sixty dollars ($4,160.00) in sixty (60) days from the entry of this decree, with interest on said amount at the rate of six (6) per centum per annum from the entry of this decree down to the date of payment, and that upon default in payment thereof the said receiver may have execution therefor as in judgment at common law.

It is thereupon severally ordered, adjudged and decreed that William Henri Adams, administrator *de bonis non* of William H. Adams, deceased, do pay to Joel D. Harvey, the receiver in this cause, for the benefit of all the creditors of said bank, nineteen thousand nine hundred and sixty-eight dollars ($1-,968.00), in due course of administration, but not earlier than sixty (60) days from the entry of this decree, with interest on said amount at the rate of six (6) per centum
per annum from the entry of this decree down to the
75 date of payment, and that upon default in payment thereof
the said receiver may have proper process to enforce the collection thereof.

It is further ordered, adjudged, and decreed that each and all of the payments decreed herein may, at the option of the debtor or debtors or of the executors or administrators of a deceased debtor or debtors, be paid before the times respectively appointed herein for such payments, and in each and all cases of prepayment interest shall only be collected up to the time of such prepayment.

This court doth further find, in accordance with the stipulation of the parties in interest, that the claim introduced in evidence in this cause under the name of George Taylor, trustee, is the property of Charles Comstock, James Kelley, and William M. Tilden, one-third in each, they having paid the same as sureties and having been subrogated to the rights of the said trustee and his *cestuis que trust.*, and are entitled in the above proportion to any dividends that may be paid upon said claim, but they have no right to offset said claim in any manner against stock liability or against any decree or judgment founded on such liability.

This court doth further find from the evidence that this cause in
chancery was necessary to ascertain the debts of the bank,
76 administer its assets, and ascertain the liability of its stock-
holders, and that the following stockholders at the time of the failure of the bank owned and still own the shares herein set

opposite their names, respectively, namely: Mrs. S. D. Bushnell, fifty (50) shares; Mrs. N. Hannah, ten (10) shares; H. P. Stanley, fifty (50) shares; E. M. Moffett, fifty (50) shares; E. A. Sowles, twenty-five (25) shares: S. T. Field, fifty (50) shares, and David Sinton, fifty-five (55) shares, and when found should (at the same times and in the same manner as the other stockholders of said bank hereinbefore mentioned) pay to the receiver in this cause, for the benefit of all the creditors of said bank, the sums herein set opposite their names, respectively, namely: Mrs. S. D. Bushnell, four thousand one hundred and sixty dollars ($4,160.00); Mrs. N. Hannah, eight hundred and thirty-two dollars ($832.00); H. P. Stanley, four thousand one hundred and sixty dollars ($4,160.00); E. M. Moffett, four thousand one hundred and sixty dollars ($4,160.00); E. A. Sowles, two thousand and eighty dollars ($2,080.00); S. T. Field, four thousand one hundred and sixty dollars ($4.160.00), and David Sinton, four thousand five hundred and seventy-six dollars ($4,576.00). and that the receiver in this cause have leave, by original or supplemental proceedings, either at law or in equity as he may be advised, to
77 proceed against each and any of the said stockholders, Bushnell, Hannah, Stanley, Moffett, Sowles, Field, and Sinton, to enforce said stock liability.

And it appearing to the court that William M. Tilden has died since the decision of this cause, but prior to the entry of a final decree herein, it is ordered that this cause be retained as to the heirs, executors, and administrators of the said William M. Tilden, and that the complainants have leave to file a bill of revivor against the executors or administrators of the said William M. Tilden.

And the said defendants, William Henri Adams, administrator *de bonis non* of the estate of William H. Adams, deceased, and Charles Comstock, Thomas Lord, and Alonzo Richmond, by their respective solicitors, come and severally pray an appeal from the said decree, which is allowed, to the Supreme Court of the United States upon the said defendants, severally and respectively, filing their appeal bonds herein, with security to be approved by the court, the penalty of the respective bonds to be double the amount decreed to be paid by the party appealing, the condition of the respective bonds to be in the usual form in such cases, and sixty days' time is hereby given in which to file such bonds, and the same time is given to the respective parties in which to file a certificate or certificates
78 of evidence or to avail themselves of such certificate or certificates as may be filed within the above-mentioned time by other parties in this cause.

And it is further ordered that as to each and all of the defendants required by the said decree to pay less than five thousand dollars, respectively, the execution of said decree by stayed until the determination of said appeals, with the right of the court to set aside or modify the said decree as to said defendants to conform to the holding of the Supreme Court, provided that said appeals or some one or more of them shall be perfected and prosecuted, and that the appellant or appellants will submit the cause upon printed briefs at the next term of the Supreme Court, as allowed by the twentieth (20th) rule of said Court, and thereupon the said appellants do respectively agree to so submit the cause in case any appeal or appeals are perfected and prosecuted by them or by any one or more of them.

And the said Joel D. Harvey, receiver, and Agnes F. Irons and Andrew H. Foskett, executrix and executor of the last will and testament of James Irons, deceased, and The Third National Bank of St. Louis, National Gold Bank of D. O. Mills & Co., Union National Bank of Oshkosh, First National Bank of Watseka, First National Bank of Hastings, Minnesota, and Joseph Penn, assignee of People's Bank of Belleville, by their respective solicitors, 79 come and severally pray an appeal from the said decree, which is allowed, to the Supreme Court of the United States upon the said appellants severally and respectively filing their appeal bonds herein, with surety, to be approved by the court, the penalty of the respective bonds to be in the amount of one hundred dollars, the condition to cover costs of appeal, and sixty days is hereby given in which to file such bonds, and the same time is given to the respective parties to file a certificate or certificates of evidence or to avail themselves of such certificate or certificates as may be filed within the above-mentioned time by other parties in this cause.

And it is further ordered that as to each and all of the co-complainants' creditors and intervening petitioners whose claims are less than five thousand dollars, respectively, the execution of said decree is stayed, with the right of the court to set aside or modify the said decree as to all parties to conform to the holding of the Supreme Court, provided that said appeals or some one or more of them shall be perfected and prosecuted, and that the appellant or appellants will submit the cause upon printed briefs at the next term of the Supreme Court, as allowed by the twentieth rule of said Court, and thereupon the said appellants do respectively agree to so submit the cause in case any appeal or appeals are prosecuted by them or by any one or more of them.

80 Afterwards, to wit, on the sixteenth day of June, 1887, came Henry G. Miller and filed in said clerk's office his affidavit in said entitled cause; which said affidavit is in the words and figures following, to wit:

Affidavit of H. G. Miller.

UNITED STATES OF AMERICA, } ss:
Northern District of Illnois, }

In the Circuit Court of the United States for said District.

AGNES F. IRONS, Executrix, &c., *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Henry G. Miller, being duly sworn, deposes and says that he is the solicitor of Moses M. Richmond, administrator of the estate of

Alonzo Richmond, deceased, one of the defendants in the above-entitled cause, & for several others of the stockholders, defendants therein, & that, as he is informed & believes, the defendant stockholders have a good defence to the claim of Joseph Penn, assignee of the People's Bank of Belleville, & that said defence is based upon the following facts, to wit: Said claim is based, as appears in the printed record (page- 317, 318), upon eight (8) promissory
81 notes for $5,000 each, dated August 5th, 1873, & payable one
year after date, made by Henry E. Pickett & guaranteed by the Manufacturers' National Bank; that the payment of said notes was secured by a trust deed of Henry E. Pickett & wife to Joseph A. Holmes, trustee, of the undivided half of the northwest quarter of section 10, T. 37 N., R. 14 E., of the 3rd P. M., in Cook county; that after said notes became due, to wit, on or about the 27th of August, 1874, an agreement in writing was entered into by & between Ira Holmes & said People's Bank of Belleville, a copy of which is hereto annexed & made a part hereof, wherein said Ira Holmes agreed that he would, on the first day of Sept., 1874, execute & deliver to said People's Bank his eighteen promissory notes aggregating $87,465.10, some payable in one year, some payable in two years, some in three years, & some in four years from their date, each bearing interest at the rate of ten per cent. per annum, & to secure the same to execute & deliver to said People's Bank his eighteen trust deeds upon the east half & the southwest quarter of said northwest quarter, each deed to embrace separate parcels of 6⅔ acres each & to secure one of said notes; that said overdue Picket notes constituted to the extent of their face value of said sum a portion of said sum of $87,465.10 for which said new notes were given & said People's Bank agreed to at once foreclose said Picket trust deed
82 & procure the trustee therein named to sell the land in said
trust deed described, & cause the same to be bought in & conveyed to said Ira Holmes, and the said Ira Holmes agreed to make every effort to acquire the fee-simple title to the whole of the land to be conveyed by him as security for his said notes. At this time said Ira Holmes was the owner in fee simple of the other undivided half of said quarter section, &, as deponent is informed & believes, said Ira Holmes purchased from Henry E. Picket his (Picket's) undivided half of said quarter section for $88,000, & the said promissory notes held by the People's Bank of Belleville to the extent of their face value & for which said Holmes was by the terms of said agreement to give his own notes as aforesaid constituted a portion of the consideration of said purchase; and said Picket thereupon & on or about the first day of Sept., 1874, conveyed his undivided half of said quarter section to said Ira Holmes by deed bearing date Sept. 1st, 1874, & recorded in the recorder's office of Cook county, Illinois, in Book 355, page 31; that in pursuance of said agreement said Joseph A. Holmes, under & in pursuance of the power in said Picket trust deed hereinbefore mentioned, sold the premises described in said trust deed to Ira Holmes & conveyed the same to him by his trustee's deed bearing date Sept. 30th, 1874, & which was re-
83 corded in the recorder's office of Cook county, in Book 445,

page 234, and that said Ira Holmes made & executed his 18 promissory notes as provided in said agreement; that he caused said tract of 120 acres to be divided into separate parcels of 6⅔ acres each, & executed a trust deed upon each of said parcels in the manner stated in said agreement, & in pursuance of said agreement delivered said notes & trust deeds to said People's Bank, which said notes & trust deeds bear date Sept. 1st, 1874, & which trust deeds were recorded in the recorder's office of Cook county Sept. 3rd, 1874, in Book 111, from page 566 to 592; and deponent is informed & believes that said Holmes caused said premises to be surveyed & laid out into lots or blocks & a plat thereof to be made, which said plat was filed for record & recorded in the recorder's office of Cook county, in Book 8 of Plats, page 81.

Deponent further says that he first became acquainted with the facts herein stated about five weeks ago.

HENRY G. MILLER.

Sworn to before me this 16th day of June, 1887.
[SEAL.] G. M. TROWBRIDGE,
Notary Public.

This agreement, made and entered into this 27th day of August,
A. D. 1874, by and between Ira Holmes, of Chicago, Illinois,
84 and the People's Bank of Belleville, of the same State, wit-
nesseth:

That the said Holmes contracts and agrees with the said bank as follows:

He will, on the first day of September, A. D. 1874, execute and deliver to said bank his eighteen promissory notes of said date, each bearing interest at the rate of ten per cent. per annum from its date, interest payable semi-annually, as follows: Nine of said notes to be for five thousand dollars each, two of said nine notes to be payable in one year from their date, four of said nine notes to be payable in two years from their date, and three of said nine notes to be payable in three years from their date, and eight of said eighteen notes to be for forty-seven hundred dollars each, three of said eight notes to be payable in three years from their date and five of said eight notes to be payable in four years from their date, and also one note for four thousand eight hundred and sixty-five dollars and ten cents, to be payable in four years from its date, the total amount for which the said eighteen notes are to be given being eighty-seven thousand four hundred and sixty-five dollars and ten cents ($87,465.10).

And the said Holmes further contracts and agrees to execute and
deliver to Charles W. Thomas, as trustees, simultaneously with the
execution and delivery of said notes, his deeds of trust upon the
east half and the southwest quarter of the northwest quarter
85 of section ten (10), township thirty-seven (37) north, range
fourteen (14) east, in Cook county, Illinois, the said deeds,
each of them, to contain like covenants with a certain deed of trust
executed by Henry E. Picket and wife to Joseph A. Holmes, as

trustee, and recorded in the recorder's office of said county, in Book 236, page 153. The said deeds shall be given to secure the said eighteen notes, severally, and shall be eighteen in number, each deed to be given to secure one of said notes, and each of said deeds shall convey six and two-thirds (6⅔) acres of said land, in the shape of a square or parallelogram, and the said Holmes agrees and contracts to proceed with all possible dispatch to have the said lands surveyed and laid out into eighteen lots or blocks of six and two-third (6⅔) acres each, and to have the same duly platted, and each of the said deeds of trust is to cover and convey one of the said lots or blocks so to be platted, and the said Holmes waives all breaches of the holder of two certain promissory notes executed by Ray and Whitney on the ninth day of February, A. D. 1874, each for five thousand dollars, one payable four months and one payable six months after said date to the order of said Ray and Whitney, and both bearing interest at the rate of ten per cent. after maturity, in not suing upon said notes within a reasonable time after the
86 same became due, and said Holmes agrees and contracts to remain liable as indorser upon said notes, notwithstanding any failure of the holder thereof in the past or the future to sue upon the same, and he agrees never to plead or allow any one for him to plead that suit was not brought against him as indorser of said notes within a reasonable time after the same became due, and the said Holmes further contracts and agrees to make every effort to acquire the fee-simple title to the whole of said land.

And the said bank contracts and agrees on its part to foreclose at once the deed of trust executed by Henry E. Picket and wife to Joseph A. Holmes, hereinabove mentioned, and to procure the said Holmes as such trustee to sell the land in said deed of trust described under the provisions thereof at the expense of said Ira Holmes; and the said bank further agrees to cause the said land to be bought in at said sale and conveyed to said Ira Holmes: Provided, however, That said Holmes shall have in all things complied with this contract: And further provided, That no one at the sale so to be made shall bid for the land in said deed of trust described as much as the incumbrances upon the same; and whereas the International Bank, doing business in the city of Chicago, claims to have a prior and first lien upon a portion of said land to secure the payment
87 of some amount, claimed to be between five thousand and ten thousand dollars, and whereas the said People's Bank is not willing to allow said claim and believes it to be unjust and unfounded, and that the said pretended prior lien has been fully discharged and paid, and whereas it is understood by the parties hereto that the said International Bank intends to endeavor to establish its said claim by a suit, it is agreed between the parties hereto that the said People's Bank may take any steps it deems proper to defeat the said claim of the said International Bank, and whatever amount the said People's Bank necessarily expends in and about any proceeding which may be had to establish or defeat said claim and in and about the payment of the same, in case the said People's Bank should see fit or be compelled to pay the same, shall be deemed to

be paid by said People's Bank at the special instance and request of said Ira Holmes and for whose benefit, and he contracts and agrees to pay the same to said People's Bank within six month after it is paid by said People's Bank.

And it is understood and agreed between the parties hereto that one of the five-thousand-dollar notes first hereinbefore mentioned, payable in three years from its date and to be marked A in red ink on its face, is given by said Holmes to secure the said People's
88 Bank, to the extent of $5,000, against the payment of the said claim of the said International Bank; and in case the said People's Bank shall succeed in defeating the said claim, then the said note shall be held by said People'- Bank as security for the necessary expenditures made and incurred by the said People's Bank in and about its defence against said claim and as security for the prompt payment of the notes of the said Holmes remaining unpaid at the time of the defeat of said claim; and the parties hereto do hereby severally solemnly estop themselves ever to plead, answer, or set up in any court or place that this contract was not made upon a good and valuable consideration moving from each to the other; and it is further understood and agreed between the parties hereto that the notes mentioned in the incumbrances now existing upon said land shall stand as additional security for said People's Bank, as far as they go, for the indebtedness to be created by the said Holmes as hereinbefore mentioned; and it is further understood and agreed between the parties hereto that two notes of Samuel J. Walker, each for $3,000, dated August 5th, 1873, both payable to the order of said Walker, one in one year after its date and one in fifteen months after its date, and also two notes of B. Philpot, one for $2,000 and one for $2,091.41, the first dated August 15th, 1873, and payable May 1st, 1874, to the order of said Philpot, and
89 the other dated March 4th, 1874, and payable four months after its date to the order of said Philpot, shall stand as security, as far as they go, for the indebtedness to be created by the said Holmes as hereinbefore provided; and it is further understood and agreed by and between the parties hereto that any money which may be paid to said People's Bank upon any of the notes which are to stand as such additional security as aforesaid shall be by said bank credited upon the said eighteen notes of the said Holmes *pro rata*, the said credit or credits to be applied, first, to the interest, and, next, to the principal of the notes remaining unpaid.

In witness whereof the said parties have hereunto interchangeably set their names this 27th day of August, A. D. 1874.

IRA W. HOLMES.
THE PEOPLE'S BANK OF BELLEVILLE,
By E. W. THOMAS, *Att'ys.*

(Endorsed:) Filed June 16, 1887. Wm. H. Bradley, clerk.

90 Afterwards, to wit, on the twentieth day of June, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AGNES F. IRONS, Executrix, &c., *et al.*
vs.
MANUFACTURERS' NATIONAL BANK OF CHICAGO *et al.*
} In Chancery.

Now come the parties hereto, by their respective solicitors, and, upon motion of complainants' solicitors, the court being now fully advised in the premises, it is ordered that this cause be redocketed, and that the same be referred to Henry W. Bishop, master in chancery, to report upon the evidence already taken in this cause in conformity with the decision of the supreme court entered herein: First, the amount of the debts of said bank still unpaid and the amount due each creditor; second, the amount of assessment necessary to be made on each share of the capital stock of said bank in order to pay the indebtedness of the bank, and, third, the amount due and payable from each shareholder upon such assessment.

And it is further ordered that the master hear further proofs in regard to the validity of the claim of the People's Bank of
91 Belleville as against the stockholders of the said Manufacturers' National Bank and whether said claim has been in whole or part released, discharged, or defeated by reason of the new matters stated in the affidavits of Harvey B. Hurd and Henry G. Miller, filed the 16th day of June instant, and that he report said additional proofs and his findings thereon to this court with all convenient speed.

And it is further ordered that all additional proofs under this order be closed before the master by or before the first day of July next.

92 Afterwards, to wit, on the thirtieth day of June, in the July term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AGNES F. IRONS, Executrix, &c., *et al.*
vs.
MANUFACTURERS' NATIONAL BANK OF CHICAGO *et al.*
} In Chancery.

Now come the parties, by their solicitors, and, on motion, the time for the defendants to put in further proof before the master under the order entered herein on the twentieth day of June instant is hereby extended to the twelfth day of July next.

93 Afterwards, to wit, on June sixteenth, 1888, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit;

Master's Report.

In the Circuit Court of the United States for the Northern District of Illinois.

AGNES F. IRONS, Executrix, &c., *et al.*
vs.
MANUFACTURERS' NATIONAL BANK OF CHICAGO *et al.*
} In Chancery.

To the honorable the judges of said court:

In pursuance of a direction of the court entered in this cause on the twentieth day of June, A. D. 1887, by which the same was referred to the undersigned, as master, to report upon the evidence already taken in this cause, in conformity with the decision of the supreme court entered herein—

First. The amount of the debts of said bank still unpaid and the amount due each creditor.

Second. The amount of assessment necessary to be made on each share of the capital stock of said bank in order to pay the indebtedness of the bank, and

94 Third. The amount due and payable from each shareholder upon such assessment, and to hear further proofs in regard to the validity of the claim of the People's Bank of Belleville as against the stockholders of the said Manufacturers' National Bank, and whether said claim has been in whole or part released, discharged, or defeated by reason of the new matters stated in the affidavits of Harvey B. Hurd and Henry G. Miller filed on the sixteenth day of June, A. D. 1887, and report said additional proofs and his findings thereon, I respectfully report that, having given notice to the respective solicitors that a hearing for the purposes of said order expressed therein would be had before me at my office on the twenty-second day of June, A. D. 1887, I was upon that day and upon subsequent days, as appears from the testimony taken under this reference, attended by Mr. D. J. Schuyler and Mr. Henry B. Mason, on behalf of the creditors and receiver, and by Mr. Harvey B. Hurd and Mr. Henry G. Miller, on behalf of certain defendants; at which time the testimony & exhibits already before introduced in this cause were again exhibited to me and offered in evidence before me, together with the record herein.

95 I further report that upon said twenty-second day of June, A. D. 1887, and subsequently thereto the testimony of the following witnesses, viz., Ira Holmes, Charles W. Thomas, and Henry E. Picket, was also taken before me & offered in evidence and is herewith reported.

I further report that the issues under said reference were argued before me by Mr. Schuyler and Mr. Mason, of counsel for the receiver and creditors, and by Mr. Miller and Mr. Hurd, of counsel for the stockholders.

Upon consideration of which I find and report—

First. The amount of debts of said bank still unpaid upon the

twenty-fifth day of March, A. D. 1888, and the amount due each creditor thereof at said date are set forth in the paper attached to this report & made a part hereof and marked Schedule "A." This schedule gives the name of each creditor, and opposite his name the amount due him at the date last aforesaid, and the footing shows the total amount of debts of said bank still unpaid to be the sum of $91,420.14 at the date last aforesaid. All the claims mentioned in Schedule "A" are shown by the testimony to be valid and subsisting debts of the said bank due and unpaid, and the stock-
96 holders of said bank are liable for the payment thereof, except such stockholders as have received discharges in bankruptcy.

Second. The amount of assessment necessary to be made on each share of the capital stock of the Manufacturers' National Bank in order to pay the indebtedness of said bank and the amount due and payable from each shareholder upon such assessment are stated in the paper attached to this report & made a part hereof & marked Schedule "B." This schedule gives the name of each stockholder, and opposite his name the number of his shares of stock in said bank, the par value thereof, the per cent. of assessment to be levied thereon, and the amount due and payable from him upon such assessment.

Schedule "C" embraces the names of deceased stockholders as to whose estate a bill of revivor must be filed, stockholders discharged in bankruptcy, and stockholders liable to assessment when found, and the respective amounts. Of the claims reported in the list herewith there are none in dispute, except the claims of Aaron Wilcox & Co., Adaline E. Kent, and Joseph Penn, assignee of the
97 People's Bank of Belleville. The validity of the two first of these claims is not affected by the testimony recently taken, and I find and report them as established for the amounts stated in the list of claims respectively. In regard to the claim of George Taylor, trustee, it is conceded and stipulated between the parties that Charles Comstock, James Kelly, and William M. Tilden have become the owners thereof in the proportion of one-third each, having paid the same as sureties and subrogated to the rights of said trustee by reason thereof, and they are entitled in that proportion to any dividends that may be paid upon said claims, but have no right to offset their claims against any stock liabilities of their own or against any decree or judgment upon it.

I find and report that the claim of the assignee of the People's Bank of Belleville is based upon the guaranty of the Manufacturers' National Bank of promissory notes made by Henry E. Pickett and secured by real estate, amounting in the outset to $50,000; that this guaranty was made by Ira Holmes, who was an officer of said Manufacturers' National Bank, and before the failure of the bank.
98 these notes were secured by a trust deed to Joseph A. Holmes upon the undivided half of the northwest quarter of section ten, township thirty-seven north, range fourteen, being (80) eighty acres, one undivided half of which eighty acres was owned by said Pickett (and a five-acre tract and twenty-six lots) and the other un-

divided half of said eighty acres by said Ira Holmes individually; that after the maturity of these notes and in the month of August, A. D. 1874, Ira Holmes made a written contract with the People's Bank by which he was to give and did give the bank his promissory notes aggregating the sum of $87,465.00, to secure the Pickett notes (and other indebtedness for which the bank was not liable), payable in one, two, three, and four years, securing the payment thereof by a trust deed upon said property and the southeast quarter of said southwest quarter, containing forty acres additional, and that subsequently foreclosure proceedings were had upon the trust deed made by Pickett, resulting in the placing of the title to the entire tract in the name of said Ira Holmes, and the amount for which the property was sold, to wit, the sum of ten thousand dollars, was
99 credited upon the notes of said Pickett, leaving due at that time upon the Pickett notes the *some* of forty thousand dollars, for the payment of which and the notes of said Ira Holmes the entire tract remained charged, said Pickett having, for the purpose of enabling the parties to carry out the arrangement referred to, executed a quitclaim deed of his interest in said property to said Ira Holmes.

I find as a matter of fact that the consideration for the conveyance of said Pickett was his release from the payment of his notes which were thereafter held under the terms of the contract between Ira Holmes and the People's Bank for the purpose of preserving the guaranty of the bank.

That said arrangement changed the original contract of guaranty made by the Manufacturers' National Bank, by the taking of the new security and the extension of time resulting therefrom upon the original indebtedness.

I find further that the deed executed by said Pickett as the result of the agreement referred to was made under an arrangement
100 between said Holmes and Pickett and assented to by said People's Bank of Belleville that said Pickett was to be released and discharged from any further liability or payment upon the original indebtedness.

By reason of which I find that the Manufacturers' National Bank, the original guarantor, became discharged from all further liability on account of such undertaking of guaranty, and recommend that the claim against it be disallowed.

If, however, the court should be of the opinion that the claim of said People's Bank of Belleville has not been released, discharged, or defeated to any extent by reason of the new matters referred to and the testimony taken upon this reference and the other testimony previously taken, then and in that case I find and report that the amount of the debts of said bank still unpaid upon the twenty-fifth day of March, A. D. 1888, and the amount due each creditor thereof at said date are set forth in the paper marked Schedule "D," hereto attached. The amount of assessment necessary to be made on each share of the capital stock of said Manufacturers' National Bank in order to pay the indebtedness of the bank and the amount
101 due and payable from each shareholder upon such assess-

ment are stated in the paper marked Schedule "E," hereto attached. Schedule "F" embraces the names of deceased stockholders as to whose estate a bill of revivor must be filed, stockholders discharged in bankruptcy, and stockholders liable to assessment when found, and the respective amounts, said Schedules "D," "E," and "F" being made a part of this report.

I return herewith the testimony taken before me upon this reference, together with the documents offered in evidence and used by me in the preparation of this report.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, April 13, A. D. 1888.

102 SCHEDULE "A."

Valid Outstanding Claims against Manufacturers' National Bank.

Names of creditors.	Principal of claims.	Interest at 6 % per annum from Sept. 25, 1873, date of banks going into voluntary liquidation, down to March 25, 1888.	Aggregate amount due March 25, 1888.	Whether claim disputed or admitted by defendants.
George Taylor, trustee	15,000	13,050	28,050	Admitted.
Gerts, Lombard & Co.	720 43	626 76	1,347 19	"
Estate of M. Foley	1,240 71	1,079 40	2,320 11	"
Aaron Wilcox & Co.	10,000	8,700	18,700	Disputed.
Hide & Leather Bank	1,969 74	1,713 66	3,683 40	Admitted.
Joseph Shugart	338 71	294 66	633 37	"
Chandler & Craig	384 93	334 88	719 81	"
Thomas Mahony	650	565 50	1,215 50	"
Adaline E. Kent	6,250	5,437 50	11,687 50	Disputed.
Estate of Jas. Irons	11,596 75	10,089 17	21,685 92	Admitted.
C. E. Pope	336 55	292 79	629 34	"
Mrs. H. V. Dunton	400	348	748	"
	48,887 82	42,532 32	91,420 14	

103

SCHEDULE "B."

Stockholders as to Whom a Decree Can Now Be Entered.

Names.	Number of shares.	Par value.	Assessment.	Amount of assessment.
Charles Osborn	10	1,000	18.28 %	$182 80
Mrs. A. E. Canfield	24	2,400	"	438 72
William A. Butters	10	1,000	"	182 80
Joseph A. Holmes	500	50,000	"	9,140
Edward Leonard	10	1.000	"	182 80
Thomas D. Snyder	50	5,000	"	914 00
William S. Fawcett	50	5,000	"	914 00
Alonzo Richmond	100	10,000	"	1,828
Monroe Heath, William F. Milligan, } In common	20	2,000	"	365 60
Thomas Lord	80	8,000	"	1,462 40
Charles Huchinson	50	5,000	"	914
Morris Merrill	8	800	"	146 24
S. Wickersham	60	6,000	"	1,096 80
Charles Comstock	150	15,000	"	2,742 00
Gill W. Peaslee	50	5,000	"	914
William M. Tilden, estate of	80	8,000	"	1,462 40
Charles E. Ray, William C. Whitney, } In common	100	10,000	"	1,828
Joseph L. McDuffee estate of	50	5,000	"	914
Marshall Field	50	5,000	"	914
Silas B. Cobb	50	5,000	"	914
William H. Adams, estate of	240	24,000	"	4,387 20
	1,742	174,200	----------	31,843 76

104

SCHEDULE "C."

Deceased Stockholder as to Whose Estate a Bill of Revivor Must Be Filed.

Name.	Number of shares.	Par value.	Assessment.	Amount of assessment.
John N. Gage	50	$5,000	18.28%	914 40

Stockholders Discharged in Bankruptcy.

Names.	Number of shares.	Par value.	Assessment.	Amount of assessment.
Edgar Holmes	1,000	100,000	18.28 %	18,280 00
Ira Holmes	1,813	181,300	“	33,141 64
W. G. E. Pope	55	5,500	“	1,005 40
M. D. Buchanan	50	5,000	“	914 00
	2,918	291,800	----------	53,341 04

Stockholders Liable to Assessment When Found.

Names.	Number of shares.	Par value.	Assessment.	Amount of assessment.
Mrs. S. D. Bushnell	50	5,000	18.28 %	914 00
Mrs. N. Hannah	10	1,000	“	182 80
H. P. Stanley	50	5,000	“	914
E. M. Moffatt	50	5,000	“	914
E. A. Sowles	25	2,500	“	457
S. F. Field	50	5,000	“	914
David Linton	55	5,500	“	1,005 40
	290	29,000	----------	5,301 20

105

SCHEDULE "D."

Valid Outstanding Claims against Manufacturers' National Bank.

Names of creditors.	Principal of claims.	Interest at 6 % per annum from Sept. 25, 1873, date of banks going into voluntary liquidation, down to March 25, 1888.	Aggregate amounts due March 25, 1888.	Whether claim disputed or admitted by defendants.
George Taylor, trustee	$15,000	13,050	28,050	Admitted.
Gerts, Lombard & Co.	720 43	626 76	1,347 19	"
Estate of M. Foley	1,240 71	1,079 40	2,320 11	"
Aaron Wilcox & Co.	10,000	8,700	18,700	Disputed.
Hide & Leather Bank	1,969 74	1,713 66	3,683 40	Admitted.
Joseph Shugart	338 71	294 66	633 37	"
Chandler & Craig	384 93	334 88	719 81	"
Thomas Mahony	650	565 50	1,215 50	"
Adaline E. Kent	6,250	5,437 50	11,687 50	Disputed.
Joseph Penn, assignee	40,000	34,800	74,800	"
Estate of Jas. Irons	11,596 75	10,089 17	21,685 92	Admitted.
C. E. Pope	336 55	292 79	629 34	"
Mrs. H. V. Dunton	400	348	748	"
	88,887 82	77,332 32	166,220 14	

106 SCHEDULE “ E.”

Stockholders as to Whom a Decree Can Now be Entered.

Names.	Number of shares.	Par value.	Assessment.	Amount of assessment.
Charles Osborne	10	$1,000	33.24 %	$332 40
Mrs. A. E. Canfield	24	2,400	“	797 76
William A. Butters	10	1,000	“	332 40
Joseph A. Holmes	500	50,000	“	16,620
Edward Leonard	10	1,000	“	332 40
Thomas D. Snyder	50	5,000	“	1,662 00
William Fawcett	50	5,000	“	1,662 00
Alonzo Richmond	100	10,000	“	3,324 00
Monroe Heath, William F. Milligan, } In common	20	2,000	“	664 80
Thomas Lord	80	8,000	“	2,659 20
Charles Hutchinson	50	5,000	“	1,662 00
Morris Merrill	8	800	“	265 92
S. Wickersham	60	6,000	“	1,994 40
Charles Comstock	150	15,000	“	4,986 00
Gill W. Peaslee	50	5,000	“	1,662 00
William M. Tilden, estate of	80	8,000	“	2,659 20
Charles E. Ray, William C. Whitney, } In common	100	10,000	“	3,324 00
Joseph L. McDuffee, estate of	50	5,000	“	1,662 00
Marshall Field	50	5,000	“	1,662 00
Silas B. Cobb	50	5,000	“	1,662 00
William H. Adams, estate of	240	24,000	“	7,977 60
	1,742	174,200		$57,904 08

107 SCHEDULE “ F.”

Deceased Stockholders as to Whose Estate a Bill of Revivor Must be Filed.

Names.	Number of shares.	Par value.	Assessment.	Amount of assessment.
John N. Gage	50	$5,000	33.24 %	$1,662 00

Stockholders Discharged in Bankruptcy.

Name.	Number of shares.	Par value.	Assessment.	Amount of assessment.
Edgar Holmes	1,000	100,000	33.24 %	33,240 00
Ira Holmes	1,813	181,300	"	60,264 12
W. G. E. Pope	55	5,500	"	1,828 20
M. D. Buchanan	50	5,000	"	1,662 00
	2,918	291,800	----------	96,994 32

Stockholders Liobel [Liable] to Assessment When Found.

Names.	Number of shares.	Par value.	Assessment.	Amount of assessment.
Mrs. S. D. Bushnell	50	$5,000	33.24 %	1,662 00
Mrs. N. Hannah	10	1,000	----------	332 40
H. P. Stanley	50	5,000	----------	1,662 00
E. M. Moffatt	50	5,000	----------	1,662 00
E. A. Sowles	25	2,500	----------	831 00
S. F. Field	50	5,000	----------	1,662 00
David Linton	55	5,500	----------	1,828 20
	290	29,000	----------	9,639 60

108 *Stipulation.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court of the United States for the Northern District of Illinois. June Term, A. D. 1888.

IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } Chancery. T. No. 5. G. No. 14655.

It is hereby stipulated by and between the complainants and defendants that the master's report may be filed *instanter*, to be taken up before his honor Judge Henry W. Blodgett upon ten days' notice from either side, and that at the hearing objections and exceptions to the said report or any part thereof may be urged by either side with the same effect as though objections and exceptions had been duly filed within the regular time or times prescribed by the rules and practice of this court.

Dated June 9, 1888.

HENRY B. MASON,
D. J. SCHUYLER,
By HENRY B. MASON,
Complainants' Solicitors.
HENRY G. MILLER,
H. B. HURD,
Defendants' Solicitors.

109 In the Circuit Court of the United States for the Northern District of Illinois.

AGNES F. IRONS, Executrix, &c., *et al.*, Complainants,
vs.
MANUFACTURERS' NATIONAL BANK OF CHICAGO *et al.*, Defendants.
} In Chancery.

Testimony taken before Henry W. Bishop, master in chancery of said court, the 22nd day of June, A. D. 1887.

Present: Mr. Mason and Mr. Schuyler, representing creditors and receiver; Mr. Hurd and Mr. Miller, representing certain defendants.

IRA HOLMES, a witness recalled on behalf of the defendants, being first duly sworn, was examined in chief by Mr. MILLER, and deposes and says as follows:

Mr. MILLER: You have testified before in this case, have you not?

A. Yes, sir.

Q. There has been given in evidence on behalf of the People's Bank of Belleville ten promissory notes for $5,000, made by Henry
E. Pickett, dated August 5, 1873, payable one year after date,
110 endorsed by Pickett and the Manufacturers' National Bank,
together with a letter written by Mr. Buchanan, vice-president of the bank, to Mr. Bagley, cashier of the People's Bank, dated August 8, 1873, in which he states: "I herewith hand you ten notes for $5,000 each," and says that "the trust deeds securing said notes had been filed for record and as soon as recorded I will forward the same to you." What was the trust deed securing those notes?

A. An undivided half of 160 acres, 95th and State St., northwest corner of sections 10, 37, 14.

Objected to by complainants as secondary evidence, and the original instrument called for.

Mr. HURD: We give notice now to the complainant, especially to the counsel for the claimant, to produce the original mortgage of trust deed.

Mr. SCHUYLER: We have not got it; the notice is not good, for the reason we can produce a certified copy, which is the best evidence aside from the instrument itself.

Q Was that trust deed recorded in the recorder's office?
A. I suppose so; I didn't have the management of the details.
Q. Have you seen it since?
A. No, sir; I probably saw it at the time I made the trade.
Q. Did you, after these notes became due, enter into a contract with the People's Bank of Belleville?
A. It was after they became due, I think.
Q. Was that contract in writing?
A. Yes, sir.
111 Q. Is this the contract?
A. Yes, sir.

Counsel for defendant offers in evidence the contract or agreement, dated August 27th, 1874, between Ira Holmes and the People's Bank of Belleville, recorded May 17, 1878, in Book 827 of Records, page 159, marked "Defendant's Exhibit 1."

This introduction of this instrument was objected to because it is immaterial and because there is no proof that it was the contract of the People's Bank of Belleville.

Q. In this contract you agree "to make every effort to acquire the fee-simple title to the whole of said land." Who owned the northwest quarter of section 10 at that time?

Objected to as immaterial and not proper evidence of the ownership of the property.

A. Henry E. Pickett and myself.
Q. How much was it worth at that time?
A. I bought Pickett's half just about that time for $1,100 an acre; $88,000.
Q. How much was it worth, do you think, at that time—at the time this contract was made?
A. I think that at that time it was worth about sixteen or seventeen hundred dollars an acre. I thought I bought it very cheap.
Q. Were you acquainted with the value of it at that time?
A. As well as anybody could be.
Q. You think at that time it was worth at least eleven
112 hundred dollars an acre?
A. I considered it very cheap at that.
Q. What did you do in execution of the portion of the agreement I have just read to you "to make every effort to acquire a fee-simple title to the whole of said tract?"
A. I bought Picket's interest and got a deed from him.
Q. Is that deed recorded?
A. Yes, sir.

Objected to unless the deed is produced.

Q. You paid for it how much?
A. $88,000.
Q. How was that $88,000 made up?
A. Principally of indebtedness to me and $50,000 that the Bank of Belleville had, and $5,000 that he owed on his half at the Inter-

national Bank, and one-half of about $11,000 that he owed on the 106 acres jointly; that would make $60,000; the balance I don't know what it was. I had a good deal of his paper. I may have given him some money at the time; I don't remember.

Q. Did you have a settlement with him at that time?

A. Yes, sir; all cleaned up.

Q. Did he at that time know about this contract that you had made with the People's Bank?

A. I think he did.

Q. Did you tell him about it?

A. I think I must have done so. I know he was familiar with all my trades. I told him why I wanted to buy it.

Q. In this agreement you engage to execute on the 1st of September, 1874, and deliver to said bank your eighteen promissory notes aggregating $87,465.10. What were those notes?

113 A. $50,000 of Picket paper; $15,000 incumbrance on the land; $10,000 held by one party, and $5,000 by the International Bank, and some other paper discounted for the bank. I don't know whose paper it was.

Q. But a portion of it was these Picket notes of $5,000 each, aggregating $50,000?

A. $50,000 of it of those notes.

Q. So your notes were given for those notes?

A. Yes, sir.

Q. I will ask you whether on the 1st of September, 1874, you executed these notes as provided in this agreement?

A. I did.

Q. What was done with these notes and trust deeds?

A. They were delivered to the attorney of the People's Bank of Belleville.

Q. Who was that?

A. Mr. Thomas. I either delivered them to him or to Mr. Piper, the president of the bank.

Q. Was he here at the time?

A. He was here at the time. He was here several times while the trade was pending. Whether he was here when the trade actually closed and the papers were turned over, I don't remember. He and Mr. Thomas and I had several conferences.

Q. Did he participate in the negotiation which resulted in this agreement?

A. Yes, sir.

Q. He knew all about it?

114 A. He knew all about it. The proposition was submitted to him, I believe, before Thomas accepted it.

Q. Who acted as the attorney of the bank in making this?

A. Mr. Thomas.

Q. C. W. Thomas?

A. Yes, sir.

Q. At that time Piper, the president of the bank, was here?

A. Yes, sir; he was here several times.

Q. Do you know whether Mr. Thomas had possession of the Picket notes and trust deed at the time the negotiation was made?

A. I don't know; I know he came here accredited by the bank as their attorney.

Q. In what form was he accredited?

A. It must have been, I think, by letter; he came here and said he was their attorney.

Objected to on the ground that the letter of introduction should be produced.

A. I would not be positive about that, but that is my recollection. I don't know whether he came personally or brought the letter; certainly before I opened negotiations with him I was sure he was authorized.

Q. You say Piper was president and the negotiation was with him and Thomas?

A. Yes, sir; at different times.

Q. Before the contract was made?

A. Yes, sir.

Q. In whose handwriting are the words "in witness whereof?"

A. I don't know.

Q. You said you gave the notes and trust deed either to Mr. Thomas or to Mr. Piper, the president of the bank?

115 A. I won't be sure whether I gave them to him or my attorney gave them to him—Mr. Hutchinson or myself. My attorney, myself, Mr. Piper, and Mr. Thomas were almost always present at our interviews; whether I gave them to Hutchinson to deliver to Mr. Thomas or I delivered them personally I don't know.

Q. Were they recorded?

A. It was in the abstract; I did not attend to any of the details of it.

Q. You left that to Mr. Hutchinson, did you?

A. Yes, sir.

Q. Has anything been done since at the bank in regard to the notes and trust deed?

A. Which ones?

Q. The notes you gave.

A. It has all been foreclosed, I understand, by the bank.

Objected to because the records of foreclosure would give that.

Q. Have you ever had since that time communication with Piper or the bank in regard to those notes?

A. No, sir.

Q. So far as you know, they hold the notes still?

A. Yes, sir.

Q. Did you have the property subdivided?

A. I subdivided it.

Q. And had the plat recorded?

A. Yes, sir.

Q. In order to carry out this contract?

A. Yes, sir.

Q. Did you carry out this contract in every respect?

Objected to as leading and the record of the plat called for.

A. Yes, sir.

116 Q. Has the bank ever repudiated since that time this contract in any way?

Objected to as leading and asking for a conclusion of law.

Q. What has the bank done with respect to these notes since that time?

A. I only know by looking at the abstract. The foreclosed——

Objected to.

Q. Was anything said by you to Mr. Piper or Thomas about your getting this deed from Picket?

A. Certainly.

Q. Did you communicate to them that you had got it after you got it?

A. I don't remember whether I did or not; I presume, of course, I did.

Q. What did you say to them on that subject about getting the deed?

A. I was to go on and buy Picket's interest in this property as soon as I could and get the title in me.

Q. That was one of the things talked about to be done?

A. Yes, sir.

Q. They knew where you could get the title?

A. Knew all about it; they held a trust deed upon it themselves—upon Picket's half.

Q. Then in addition to the 80 acres you put in 40 acres more?

A. Yes, sir; in my own name.

Q. So as to secure $87,000 instead of the $50,000?

A. Yes, sir.

Q. Did this bank hold all of that $87,000?

A. Yes, sir.

117 Q. They held an incumbrance upon it?

A. Two incumbrances they did hold—one of $5,000 to the International Bank, which they agreed with me to pay, and one held, I don't know by whom, I think by Greenebaul, for $10,700. They paid $10,700, and the International claim they held it for $5,000 more than they really paid. When the supreme court decided against the International and had to take $5,000 instead of $10,000, it had so depreciated the bank did not take it up; the rest of the 160 acres was sold; the west 53 of the 860 was sold for seven or eight thousand dollars and all the rest of the $87,000.

Q. All the other incumbrances were held by the Belleville Bank?

A. Yes, sir; all except $10,000 and $5,00-. They had about $72,000.

Q. So you got in the title to the eighty acres and then took in forty acres of your own, giving them 120 acres to secure this $87,000 or notes for that amount?

A. Yes, sir.

Q. Your notes covered the entire indebtedness?

A. Yes, sir.

Q. That which they held?

A. Yes, sir; and outside of this.

Q. And the understanding was they were to take up the outstanding indebtedness?

A. Yes, sir; they had taken up $10,000 and offered to take up the $5,000.

Q. Your notes covered the whole amount?

A. Yes, sir.

Q. That which they held together with that which they were to take up?

A. Yes, sir.

118 Q. What was done with the trust deed from Picket to Joseph A. Holmes given to secure these notes, aggregating $50,000?

A. That trust deed was foreclosed; a trust deed made to me by Joseph A. Holmes.

Q. Was that recorded?

Objected to as not the best evidence.

A. Yes, sir.

Q. Do you know who requested Joseph A. Holmes to foreclose this trust deed?

A. The Bank of Belleville.

Q. It was done at their instance?

A. Yes, sir.

Q. Were you present at the sale?

A. I don't know whether I was or not; I presume I was.

Q. And then the property was conveyed to you by Joseph A. Holmes in pursuance of this agreement?

A. Yes, sir.

Q. Do you know who first saw Joseph A. Holmes about foreclosing this trust deed?

A. No, sir; I do not.

Q. Did you have any talk with him about it?

A. I don't remember; I undoubtedly did; probably Joseph and I talked it over; we were all interested together.

Q. Did Joseph A. Holmes know what the agreement was?

A. Yes, sir.

Q. He foreclosed it, if he did foreclose it, in pursuance of this agreement?

A. He must have foreclosed it at their request, because they held the papers; could not have foreclosed it without. He would have to foreclose it if they demanded it, and they must have demanded it in order to get him to do it.

119 Mr. HURD: Did you pay anything to Joseph A. Holmes on this foreclosure—did you pay him any money or pay anything on that—make any payment except such as you have

stated, this $87,000, by giving your paper? Did you pay to Joseph A. Holmes any money at the time?

A. I don't think I did. I think it was not a contested foreclosure; might have given him five or ten thousand dollars in money. I think I did.

Q. But you did not pay to Joseph A. Holmes, as trustee, any money on the foreclosure of this trust deed?

A. Not that I remember.

Q. Did you pay Joseph A. Holmes $97,000 in cash?

A. I have not the slightest recollection.

Q. Have you any recollection you did pay him any money?

A. No, sir.

Q. What is your best recollection, that you did or did not?

A. I have not any recollection; I don't remember the details of that foreclosure.

Q. Were you present and bid?

A. It says I was, and I presume I was, but I have forgotten it entirely. I know the programme was all marked out between my attorney and myself with the Manufacturers' Bank, the People's Bank and their attorney, and Picket. The idea was to secure the People's Bank for what money we got, and I gave them this additional security because I felt under personal obligations to take care of them and because they paid $5,000 for me individually.

Q. They were to take up that $5,000?

A. Yes, sir; they did take it up, the one I really was responsible for, but did not take up the other. Mr. Picket had borrowed
120 money of the International. I owed $5,000 on my note; Picket owed $50,000 on his half. There was some other paper, and Picket owes $10,000 to be taken up any way. If you take up not only Picket's but pay my $5,000, which would make $15,000, I will go to work and make a trade with Picket and get the whole land, and instead of your having 80 acres you shall have 120 acres, and it was worth $120,000, and I will give you $88,000 and take up a lot of Samuel Walker's, Philpot and Ray and Whitney's paper that you have got. I will take that paper and give you forty acres of land next to this. I gave them what I considered $4,000 worth of property that belonged to me personally to assist in protecting their bank if they would pay for me personally the $5,000 which I owed upon the whole interest in the 160 acres.

Adjourned to 2.30 p. m. Thursday, June 23d.
Signature waived.

121 DEFENDANTS' EXHIBIT L.

This agreement, made and entered into this 27th day of August, A. D. 1874, by and between Ira Holmes, of Chicago, Illinois, and the People's Bank of Belleville, of the same State, witnesseth: That the said Holmes contracts and agrees with the said bank as follows: He will, on the first day of September, A. D. 1874, execute and deliver to said bank his eighteen promissory notes of said date, each bearing interest at the rate of ten per cent. per annum from its date, interest payable semi-annually as follows: Nine of said notes to be for five thousand dollars each, two of said nine notes to be payable in one year from their date, four of said nine notes to be payable in two years from their date, and three of said nine notes to be payable in three years from their date, and eight of said eighteen notes to be for forty-seven hundred dollars each, three of said notes to be payable in three years from their date, and five of said eight notes to be payable in four years from their date, and also one note for four thousand eight hundred and sixty-five dollars and ten cents, to be payable in four years from its date. the total amount for which the said eighteen notes are to be given being eighty-seven thousand four hundred and sixty-five dollars and ten cents ($87,465.10).

And the said Holmes further contracts and agrees to execute and deliver to Charles W. Thomas, as trustee, simultaneously with the execution and delivery of said notes, his deeds of trust upon the east half and the southwest quarter of the northwest quarter of
122 section ten (10), township thirty-seven (37) north, range fourteen (14) east, in Cook county, Illinois, the said deeds, each of them, to contain like covenants with a certain deed of trust executed by Henry E. Picket and wife to Joseph A. Holmes, as trustee, and recorded in the recorder's office of said county, in Book 236, at page 153. The said deeds shall be given to secure the said eighteen notes severally and shall be eighteen in number, each deed to be given to secure one of said notes, and each of said deeds shall convey six and two-thirds (6⅔) acres of said land in the shape of a square or parallelogram, and the said Holmes agrees and contracts to proceed with all possible dispatch to have the said lands conveyed and laid out into eighteen lots or blocks of six and two-thirds (6⅔) acres each, and to have the same duly platted, and each of the said deeds of trust is to cover and convey one of the said lots or blocks so to be platted, and the said Holmes waives all laches of the holder of two certain promissory notes executed by Ray and Whitney on the ninth day of February, A. D. 1874, each for five thousand dollars, one payable four months and one payable six months after said date to the order of said Ray and Whitney and both bearing interest at the rate of ten per cent. after maturity, in not suing upon said notes within a reasonable time after the same became due, and said Holmes agrees and contracts to remain liable as endorser upon said notes, notwithstanding any failure of the holder thereof in the past or the future to sue upon the same, and he agrees never to
123 plead or to allow any one for him to plead that suit was not brought against him as endorser of said notes within a reasonable time after the same became due; and the said Holmes further contracts and agrees to make every effort to acquire the fee-simple title to the whole of said land.

And the said bank contracts and agrees on its part to foreclose at once the deed of trust executed by Henry E. Picket and wife to Joseph A. Holmes hereinabove mentioned, and procure the said Holmes as such trustee to sell the lands in said deed of trust described under the provisions thereof at the expense of said Ira Holmes; and the said bank further agrees to cause the said land to be bought in at said sale and conveyed to said Ira Holmes: Provided, however, that said Holmes shall have in all things complied with this contract: And further provided, that no one at the sale so to be made shall bid for the land in said deed of trust described as much as the encumbrances upon the same.

And whereas the International Bank, doing business in the city of Chicago, claims to have a prior and first lien upon a portion of said land to secure the payment of some amount claimed to be between five thousand and ten thousand dollars; and whereas the said People's Bank is not willing to allow the said claim and believes it to be unjust and unfounded, and that the said pretended prior lien has been fully discharged and paid; and whereas it is understood by the parties hereto that the said International Bank 124 intends to endeavor to establish its said claim by suit, it is agreed between the parties hereto that the said People's Bank may take any steps it deems proper to defeat the said claim of the said International Bank, and whatever amount the said People's Bank necessarily expends in and about any proceeding which may be had to establish or defeat said claim and in and about the payment of the same, in case the said People's Bank should see fit or be compelled to pay the same, shall be deemed to be paid by said People's Bank at the special instance and request of said Ira Holmes and for his benefit, and he contracts and agrees to pay the same to said People's Bank within six months after it is paid by said People's Bank.

And it is understood and agreed between the parties hereto that one of the five-thousand-dollar notes first hereinbefore mentioned, payable in three years from its date and to be marked A in red ink on its face, is given by said Holmes to secure the said People's Bank to the extent of $5,000 against the payment of the said claim of the said International Bank; and in case the said People's Bank shall succeed in defeating the said claim, then the said note shall be held by said People's Bank as security for the necessary expenditures made and incurred by the said People's Bank in and about its defense against said claim and as security for the prompt payment of the notes of the said Holmes remaining unpaid at the time of the defeat of the said claim.

125 And the parties hereto do hereby severally solemnly estop themselves ever to plead, answer, or set up in any court or place that this contract was not made upon a good and valuable consideration moving from each to the other.

And it is further understood and agreed between the parties hereto that the notes mentioned in the encumbrances now existing upon said land shall stand as additional security for said People's Bank, as far as they go, for the indebtedness to be created by the said Holmes as hereinbefore mentioned; and it is further understood and agreed between the parties hereto that two notes of Samuel J. Walker, each for $3,000, dated August 5th, 1873, both payable to the order of said Walker, one in one year after its date and one in fifteen months after its date; and also two notes of B Philpot, one for $2,000 and one for $2,091.41, the first dated August 15th, 1873, and payable May 1st, 1874, to the order of said Philpot, and the other dated March 4th, 1874, and payable four months after its date to the order of said Philpot, shall stand as security, as far as they go, for the indebtedness to be created by the said Holmes as hereinbefore provided; and it is further understood and agreed by and between the parties hereto that any money which may be paid to said People's Bank upon any of the notes which are to stand as such additional security as aforesaid shall be by said bank credited upon the said eighteen notes of the said Holmes *pro rata*, the said credit or credits to be applied first to the interest and next to the principal of the notes remaining unpaid.

126 In witness whereof the said parties have hereunto interchangeably set their names this 27th day of August, A. D. 1874.

IRA HOLMES,
THE PEOPLE'S BANK OF BELLEVILLE,
By C. W. THOMAS, *Att'y*.

127 IRONS
vs.
MANUFACTURERS' NATIONAL BANK.

Testimony taken before Hon. Henry W. Bishop, master in chancery of said court, June 23, 1887.

Present: Mr. Mason and Mr. Schuyler, Mr. Miller and Mr. Hurd.

Ira Holmes.

128 Cross-examination by Mr. MASON:

Q. You testified in regard to the Picket notes guaranteed or endorsed by the Manufacturers' and held by the People's Bank of Belleville. I will ask you whether the People's Bank surrendered those notes to you.

A. They did not.

Q. Or to any one else, to your knowledge?

A. Not that I know of.

Q. How many of the Picket notes remained in the possession of the People's Bank?

A. I could not tell.

Q. What is your best recollection?

A. I haven't absolutely any recollection about it, but I judge, from looking at the abstract the last time I was here, that they probably gave up two of the notes, leaving $40,000 on the foreclosure. I see it was sold at $9,700. I judged they gave up two of the notes—I judged so.

Objected to.

A. I don't remember a thing about it.

Q. I show you a paper dated September 2, 1874, signed "Manufacturers' Bank, by Ira Holmes, president," and underneath, "Accepted; People's Bank of Belleville, by C. W. Thomas, attorney," and ask you if you can identify that paper.

A. Yes, sir.

Q. That is a genuine instrument?

A. Yes, sir.

Q. I show you a paper dated September 2, 1874, signed "Manufacturers' National Bank, by Ira Holmes, president," and ask you if you can identify that.

A. Yes, sir.

Q. That is the genuine instrument?

A. Yes, sir.

129 Q. I will ask you if you can give the items making up the entire indebtedness of the Manufacturers' National Bank to the People's Bank of Belleville?

A. I think I could very easily make it up if I had the abstract which has got that contract in it.

Mr. Miller: Can you from the contract?

A. I can very nearly; yes, sir. *A.* The People's Bank held Picket's paper, $50,000; Walker's paper, $6,000; Philpot's paper, $4,091, and Ray and Whitney's, $10,000; that amounted to $70,000.

Mr. Miller: When do you say the Manufacturers' National Bank owed the People's Bank these sums—at what time?

A. At the date of the contract.

Q. At the date of the contract that you made with the People's Bank?

A. Yes, sir.

Mr. Mason: It was also before the failure of the bank, was it not?

A. I don't know that the People's Bank held this paper when the bank failed; this contract was made a year after the bank failed, and whether there was some paper turned out to them in settlement of their account I don't know, or whether it had been discounted before the bank failed.

Redirect examination:

Mr. Miller: You say the items of indebtedness of the Manufacturers' Bank to the People's Bank at the time when you made this contract, August 27, 1873?

A. Yes, sir.

Q. In what form was that indebtedness?

A. They had Picket's note with the bank's guaranty, and Walker, Philpot, and Ray and Whitney's notes with the bank's guaranty.

130 Q. Then the bank was liable on these notes as guarantor?

A. Yes, sir.

Q. The question has been asked you whether at the time this agreement was made any of these ten notes for $50,000 were surrendered. Do you know anything about whether they were or not—do you recollect anything about it, whether they were or not?

A. That is a pretty hard question to answer, because seeing the two papers refreshes my mind, and I know they only retained $40,000 after the sale. I know that for a fact. They retained eight notes after the sale, the other two being given up in payment of the purchase.

Q. You mean the sale under the trust deed as provided in the agreement of August 27th?

A. Yes, sir.

Q. Two notes were given up?

A. Undoubtedly.

Q. You haven't any distinct recollection whether they were given up or not, have you?

A. I don't call to mind; I don't remember the transaction positively.

Q. The trust deed says the property was sold to you for $7,900?

A. $9,700.

Q. The deed itself will show?

A. Yes, sir. That is what I remember; the abstract shows it was $9,700.

Q. There has been handed you this afternoon two papers signed by you as president of the Manufacturers' National Bank and dated September, 1874. Was the bank in liquidation at that time?

A. Yes, sir.

Q. Was that fact known to the People's Bank?

A. Yes, sir.

131 Q. Are their representatives here in Chicago?

A. Yes, sir.

Q. What was the consideration for these two papers?

A. They were given in a general settlement with the bank.

Q. At that time was there any settlement made?

A. Yes, sir.

Q. What?

A. Set out in that agreement.

Q. Anything more than what is set out here in the agreement?

A. I don't refer to this agreement; the other agreement between the bank and myself.

Q. You mean the agreement given on the 27th of August?

A. The one in regard to section 10. I don't remember the date of it.

Q. Where you agreed to give them notes and execute a mortgage upon the property to secure them?

A. Yes, sir.

Q. That is the only agreement?

A. That is the agreement I refer to.

Q. Those papers were not executed at the time that agreement was executed; this bears date on the second day of September, 1874, and that bears date the 27th of August, 1874, and your notes bear date the 1st of September, 1874; so these papers were not all executed at the same time, were they?

A. I think those contracts were all signed at the time they were dated.

Q. Then the first contract, dated August 27th, was signed on the 27th of August?

A. About that time.

Q. And did you then proceed to carry out the provisions of that contract?

A. Yes, sir.

132 Q. The Picket deed to you, it will appear from the evidence, bears date the 1st of September and your notes the 1st of September and the trust deed?

A. Yes, sir.

Q. Then these contracts that are handed to you now are dated, each of them, the second day of September. When were these contracts executed?

A. They were not executed before they were dated; may have been executed the very day or a day afterward, but about that time.

Q. They were not executed before the second of September?

A. No, sir.

Q. Any new consideration at all?

A. No, sir.

Q. Then, as I understand you, after you had made that contract with the People's Bank which has been given in evidence and entered upon carrying it out by executing a note, &c., and buying Picket's half, you then executed for the bank or for the People's Bank these two papers?

Objected to as leading and explanatory of papers that speak for themselves.

Q. Was that the object of these two papers?

Objected to.

A. The object was to enable the People's Bank to have the benefit of the guaranty of the bank as far as they could on that paper.

Q. Where was Picket; what position did he have in the premises?

Objected to as before.

A. Picket was a good deal in the condition of a man that was gone up.

133 Q. I mean to say that Mr. Picket was to be relieved of his liability upon the notes?

Objected to as immaterial and irrelevant.

A. In my statement with Mr. Picket he was undoubtedly relieved of his personal responsibility on those notes.

Q. Was that understood all around?

Objected to.

A. I can't speak positively for the People's Bank of Belleville.

Q. But that was the understanding between you and Picket?

A. Yes, sir.

Q. Did you talk that over with these men?

A. I have no recollection of that, but I presume I did.

Q. That was your understanding of it and Picket's?

A. Certainly.

Q. Did Mr. Thomas know that you were going to get that deed from him when this contract was made?

A. Certainly.

Q. That was the only way you could get that title—by buying him out?

A. Certainly.

Q. These papers were given so if Picket was released the bank should not be released from its guaranty?

A. That is the understanding; that was the understanding.

Q. Was that your talk at the time?

A. It must have been, although I don't remember the talk.

Q. Did you have your deed from Picket when you had executed these two agreements?

A. I don't know what date I got the deed from Picket.

Q. It was dated the first of September?

A. I think I got it the moment he signed and executed it.

134 Q. On that day?

A. I think so.

Q. If that is so, then you have [had] obtained that deed from Picket then [when] you executed these agreements?

A. Yes, sir.

Q. The sale under the trust deed did not take place until the 30th of September, which would so appear when the trustees' deed was put in evidence; then how could two of those notes have been retained at the time of the execution of this agreement as the consideration money of the sale if the sale had not taken place?

A. It was arranged the property was to be bid off for about the amount it was.

Q. That was the agreement, was it?

A. That was the understanding.

Q. That it was to be bid off for that amount in your name?

A. Yes, sir.

Q. That was why eight notes were spoken of instead of ten?

A. Yes, sir.

Q. Do you know or can you say any sale actually took place?

A. I think there is not any doubt about it.

Q. Were you present at the sale?

A. It is a good while to remember the details of it.

Q. Anything more done than an advertisement and then the execution of a deed from Holmes to you?

A. There was an actual sale took place, whether I was present or not, but I think I was there. I have no doubt I was there and attended the sale.

135 Q. Did you pay any money at the sale?

A. I think these notes were tendered in payment—two of the notes.

Q. Who tendered them?

A. I don't remember.

Q. The People's Bank held them?

A. I don't know; I could not remember.

Q. If they were tendered they were treated as payment, were they not?

A. Yes, sir.

Q. Those notes were treated as paid by that deed?
A. Yes, sir.

Cross-examination resumed:

Q. At the time of this transaction Mr. Picket personally was insolvent, was he not?
A. I think he was.
Q. The three papers which have been introduced in evidence were parts of one and the same transaction, were they not?

Objected to.

A. I won't be sure that the matter of retaining the notes with the bank's guaranty was discussed when we first made the contract or was discussed later; my impression is we made this contract first, and then afterwards in talking the matter over the bank objected to giving up any security they had by virtue of the bank's guaranty and wanted that included as a part of the arrangement, to which I consented; that is my recollection of it. I don't think when we first made the contract that was thought of, but before we carried out the contract and while we were arranging things to carry
136 it out that was suggested by Mr. Thomas and I acquiesced.
Q. Do you remember whether that was so or not?
A. No; I don't positively.
Q. Was the Picket deed delivered to you before it was acknowledged before a notary public?
A. I have no recollection about that.
Q. Your opinion is that it was fully executed and acknowledged before it was delivered?
A. Yes, sir.
Q. I want to refresh your recollection as to the time when the original endorsement was made by the Manufacturers' National Bank on the original Picket note. February 18, 1884, you were examined in behalf of the stockholders and the following question was asked you: "A note has been given in evidence in behalf of the assignee of the People's Bank for $5,000, dated August 5, 1873, made by Henry E. Picket, payable to his own order one year after date and endorsed by the Manufacturers' National Bank, and seven other notes have also been given in evidence. State when, by whom, and to whom the notes were transferred. A. I think the notes were all given some time before the bank went into liquidation; that is my recollection." I next call your attention to a letter introduced in evidence, dated Chicago, August 8, 1873, from Buchanan to A. G. Bagley, cashier, and found on page 318 of the printed record which I show you. In the light of the evidence is it not now your recollection this contract of guaranty or endorsement was made before the failure of the bank?
A. Undoubtedly.

137 IRONS *vs.* MANUFACTURERS' NATIONAL BANK.

Testimony taken before Henry W. Bishop, master in chancery of said court, the 23rd day of June, A. D. 1887.

Present: Mr. Mason and Mr. Schuyler, Mr. Miller and Mr. Hurd.

CHARLES W. THOMAS, a witness on behalf of the —, being first duly sworn, was examined in chief by Mr. MASON, and testified as follows:

Q. Please state your name, age, residence, and occupation.

138 A. C. W. Thomas; residence, Belleville; occupation, attorney-at-law.

Q. At the time of the transactions which have been testified to between the Manufacturers' National Bank and the People's Bank of Belleville did you represent the People's Bank of Belleville?

A. I did.

Q. Do you know what time the Manufacturers' National Bank failed?

A. The 23rd of September, my recollection is; September, 1873.

Q. Are you able to state the indebtedness of the Manufacturers' National Bank to the People's Bank of Belleville at that time?

A. As near as I can state it at that time, it was a little over $70,000.

Q. Do you know the items of the indebtedness at that time?

A. Mr. Holmes has given the items of the indebtedness correctly, with the exception of the subsequently accrued interest, which was taken into account when the other contracts were made.

Q. Did the Manufacturers' National Bank or Henry E. Picket obtain the money which the People's Bank of Belleville were out of?

A. On the Picket note?

Q. Yes.

A. The Manufacturers' National Bank got that money.

Q. Then whatever the form of the transaction might have been, who was the principal debtor, the Manufacturers' National Bank or Henry E. Picket?

Objected to.

A. Mr. Holmes has testified to that. The Manufacturers' National Bank was the debtor.

139 Q. State whether the guaranty upon the Picket notes was made before or after the failure of the Manufacturers' National Bank.

A. Made before.

Q. You may state the circumstances under which the guaranty was made.

A. They have all been disclosed in the evidence. There was a large sum of money to the credit of the People's Bank in the Manufacturers' Bank; the Manufacturers' Bank wished to use it and sent forward these notes guaranteed by Mr. Buchanan, and that such money was taken from their account by the Manufacturers' Bank, it being in that bank at the time.

Q. Then the actual money of the People's Bank was in the Manufacturers' Bank, was it?

A. Yes, sir.

Q. I call your attention to a paper dated the second of September, 1874, signed "Manufacturers' National Bank, by Ira Holmes, president," and also endorsed "Accepted; People's Bank, by C. W. Thomas, attorney." Is that a genuine instrument?

A. Yes, sir.

Q. You know the signatures to it?

A. I wrote it myself and it was signed in my presence.

Q. Signed by you and Mr. Holmes?

A. Yes, sir.

Q. In the same manner as the signatures appear?

A. Yes, sir.

Offered in evidence by counsel for complainants, marked "Complainants' Exhibit A."

Q. I call your attention to a paper dated September 2, 1874, purporting to be signed "Manufacturers' National Bank, by Ira Holmes, president." Can you identify the signature?

140 A. Yes, sir; I wrote the paper. It was signed in my presence by Mr. Holmes.

Offered in evidence, marked "Complainants' Exhibit B."

Q. Did the People's Bank have the eight Picket notes which have been referred to at this time in its possession?

A. Yes, sir.

Q. And retained the possession of the same?

A. Yes, sir.

Q. You may state whether or not the three papers which have been introduced in evidence were parts of one and the same transaction.

Objected to because it does not appear there is any reference in one paper to the others, and they cannot be connected by parole in that way.

A. They were. They were all made in pursuance of a verbal arrangement which was perfected before any of them were written.

Objected to as incompetent.

Q. You may state what efforts were made by the People's Bank of Belleville to realize upon this indebtedness.

A. In what manner?

Q. To collect their claim.

A. From the Manufacturers' National Bank?

Q. Or in any way, or out of the land.

A. The land was sold by myself, as trustee, under the eighteen deeds of trust for default in the payment, I think, — one of the notes; probably by a provision in the deed that explains itself.

Q. Were these eighteen notes and trustee's deeds taken in payment or as additional security for the original Picket notes?

Objected to.

141 A. The eighteen notes were not made by the Manufacturers' Bank. They were made by other persons as additional security for the Manufacturers' Bank.

Objected to.

Q. How much was recovered by the People's Bank of Belleville out of these lands?

Objected to as incompetent, immaterial, and irrelevant.

A. At the sale which took place my recollection is $31,600. I will state that from memory. It was in that neighborhood, within a few hundred dollars. I was the trustee. By looking at memoranda I could tell exactly, of course.

Q. State, as near as you can, how much indebtedness—how much unpaid indebtedness—remained after applying the proceeds on the land.

A. About $50,000.

Q. Has that ever been paid?

A. No, sir.

Q. You may state, if you can, what causes prevented the full amount being realized out of the land. Were there any prior incumbrances upon the property?

A. There were no prior incumbrances upon the property at the time it was sold, but a prior incumbrance had taken the west 53 acres away from us and we only had the balance of the two-thirds of the quarter section, less half one forty, which was also taken away by a prior incumbrance, or not incumbered to us.

Q. That will appear upon the abstract?

A. Yes, sir.

Q. Was the People's Bank obliged to make any advances upon the property?

A. Yes, sir.

Q. State what they were.

142 A. We advanced $11,743.13 to pay one of the Guyton notes, which is mentioned in the deed from Picket to Holmes, recorded in Book 48, page 593; that is one of the notes. On another note Mr. Holmes has got about the right sum, $5,500, as what we paid; that is the second Guyton note. I am at a loss in my mind to tell who I paid it to. Then there was another incumbrance to the International Bank which we did not pay; that was another Guyton note, which was deposited in that bank as security for some indebtedness,

I think of Picket's, and which we never paid and which was foreclosed and which we didn't think the land justified us in redeeming, so we lost the west one-third of the land.

Q. This was all unimproved and unoccupied property, was it not?

A. Yes, sir.

Q. State whether real estate was advancing or falling at the time of the transaction.

A. I am not competent to give much information as to the condition of real estate in Chicago at that time and prefer not to do so. I don't know.

Q. Can you state whether you used your best efforts to realize all the property was worth?

A. There was a fair sale under the deed of trust and it realized the sum I have mentioned.

Q. Who was present at the sale?

A. General George W. Smith was the person who bid for the bank and was present at the sale.

Q. Mr. Holmes present?

A. Mr. Holmes was not present. I refer to the sale as trustee.

143 Q. Was there any understanding that the Picket notes were to be released by the sale made?

A. No, sir; two of them.

Q. Two were to be released?

A. Yes, sir.

Q. Eight remained in force?

A. Yes, sir. The sale only realized $9,700. It realized more than that, but there was some outside property in the deed of trust, which was not this land now under discussion—a few hundred dollars; it realized more than $9,700; enough to pay the difference between the $9,700 and accrued interest and expenses of sale.

Q. Can you state the amount of the indebtedness upon the land which the bank lost by foreclosure of prior incumbrances?

A. It was one of the Guiton notes, $10,700, with accrued interest.

Q. Upon how much land?

A. Upon the 55⅓ acres.

Q. That land was lost by the foreclosure?

A. Yes, sir.

Q. Why did not the People's Bank redeem from that sale?

Objected to.

A. Upon making inquiry we did not think the land at the time justified the expenditures; land was so much depressed at that time.

Q. What was the object of making these contracts that have been introduced in evidence?

Objected to as incompetent.

A. The object in making these contracts was—the contracts were made on account of this fact, I contended—had a different view of the value of the land from Mr. Holmes, and I contended it 144 was worth what he thought it was and was not a sufficient security for the debt, and that the People's Bank ought to have the credit of the Metropolitan Bank on all of this paper, and after much discussion it was agreed that guaranty of paper as to two of the notes — made by release. I held that the stockholders of the bank were liable on the other eight, and he proposed to hold them so, and that was the object of making the contracts. Subsequently a suit was brought on those notes in the circuit court of the United States and judgment obtained on that theory.

Q. Do you know whether in this suit you last referred to the question as to the validity of the bank's guaranty was inquired into?

Objected to.

A. I think the only plea in that case was the general issue. The questions which arose in that case and which were adjudicated were—first, whether a national bank under the banking law had the power to guarantee paper in this manner; and, secondly, whether under all the circumstances of this case this guaranty continued.

Answer objected to because the claimant does not produce the records of the case showing the issues, because the record is the best evidence, and because it is immaterial.

Cross-examination by Mr. Hurd:

145 Q. You say you acted for the People's Bank of Belleville in making this agreement of September 23rd, 1873, with Ira Holmes?

A. No, sir; I did not.

Q. August 27, 1874?

A. Yes.

Q. How came you to act for the bank?

A. I was sent here by the board of directors of the bank with full power to settle the matter as in my judgment I thought best.

Q. Are you an attorney-at-law?

A. Yes, sir.

Q. Was acting as such?

A. Yes; was a director of the bank at that time.

Q. Anybody else here with you at that time?

A. There were several journeys made by several gentlemen connected with the bank as directors, off and on; four or five of them were here at different times previous to this while the matter was being negotiated.

Q. How long a time did it take to take it up?

A. From the time we first began to say anything to the Manufacturers' Bank about a settlement to this was probably two or three months.

Q. Did you come before the Picket notes fell due? They fell due August 5th.

A. I don't know; I can't say whether any of the bank officers were here before that time or not.

Q. Can you say whether you were here before the Picket notes were due?

A. I can't say that; I know we were here two or three times on different occasions previous to September 1st; whether it would include the day prior to August 5th I could not say.

146 Q. Give your best recollection whether you or anybody else was here until after the Picket notes fell due, August 5, 1874?

A. As far as being here, my impression is somebody was here before that time. Who it was and what he did I can't say.

Q. You have no recollection of doing anything until after the notes fell due?

A. No, sir; I did nothing.

Q. Now, you speak of the manner in which those Picket notes were taken by the bank. Did you have anything to do with taking those notes?

A. Yes; I was one of the directors and one of the discount committee at the time.

Q. Were you here?

A. No, sir.

Q. You did not negotiate?

A. No, sir; it was done by letter, the whole thing.

Q. Were you familiar with the accounts of the two banks?

A. I was familiar with the accounts of one of the banks, and familiar, as far as their account was concerned, with this bank.

Q. Did you know of your own knowledge, or is it merely hearsay, that the People's Bank of Belleville had money on deposit here, as you speak of?

A. I know from the books of the People's Bank and correspondence between the two banks that was a fact.

Q. Did you not negotiate the arrangement by which the Picket notes were taken?

A. No, sir; not individually.

Q. There were other notes taken about that time?

A. There was a great deal of business between the banks.

Q. Just at that time?

A. On and off, all the time after the accounts were transferred to that bank.

147 Q. What was the reason you took this large amount of notes about that time?

A. One of the reasons is we had a million of dollars on deposit.

Q. Where?

A. At home and in other banks, and our money was lying idle. We had great confidence in Mr. Buchanan. Not at that time being acquainted with Mr. Holmes, he had gone from the other bank to the Manufacturers' Bank, and on that recommendation this loan was made.

Q. Had you any suspicion at that time that the Manufacturers' National Bank was shaken?

A. None whatever.

Q. You came here and first made a verbal arrangement—talked up what kind of arrangement you should make about the Picket notes and other notes—and then finally reduced your arrangement to writing?

A. Yes; we consumed considerable time—a number of days.

Q. And the paper which has been offered in evidence by the defendant and the two papers which have been identified to-day were part of that arrangement?

A. They, all three of them, were only a part of it; the balance of it did not happen until the 30th of September; they were all a part of it. The eighteen notes were not made on the day they bear date, because they were made on the 30th of September.

Q. You mean they were delivered after that?

A. They were delivered afterwards, because the title had not got into Holmes until the 30th of September.

Q. They were not to be delivered until the title was in Holmes?

A. Yes.

148 Q. By this sale?

A. By this arrangement.

Q. On your part you were to have a sale made on the trust deed by J. A. Holmes and the property was to be bid in for Ira Holmes on that sale, and that was to take up or satisfy two of the Picket notes?

A. Yes, sir.

Q. Amounting to $10,000?

A. Yes; and release the bank from the guaranty of these two notes.

Q. That was a part of your original talk?

A. Yes; that is a part of the transaction.

Q. And Ira Holmes was to get a quitclaim deed from Henry E. Picket?

A. In addition to his trustee's deed under the deed of trust.

Q. So Ira Holmes he got into himself all of the outstanding Picket title?

A. Yes, sir.

Q. That was all to be done before the delivery of the 18 notes to you or before the thing was closed up?

A. It could not be finally closed until that was done; therefore this first written contract was made whereby Holmes agreed substantially to do that thing.

Q. Whether the mortgages were recorded before or not, the thing was not to be entirely completed until then?

A. It was supposed on all sides that Mr. Holmes would carry out his agreement; my memory does not record what steps were taken; it was all one transaction and was so recorded.

Q. Did you say that Mr. Holmes had done as he agreed in regard to getting the Picket deed?

A. I did.

Q. Who had that recorded?

149 A. I am not certain; my impression is I had it recorded myself.

Q. As the agent of the bank?

A. Yes. I will not be certain about that; but I think I did.

Q. That vested in Holmes the legal title to the entire 160 acres of land—the northwest quarter—subject to certain incumbrances?

A. Yes.

Q. You have stated something about these incumbrances. Who gave the $11,000 incumbrance?

A. That is one of the Guiton notes mentioned in the deed from Picket to Holmes.

Q. Who gave that incumbrance?

A. B. F. Guiton.

Q. How much was that on?

A. It is set out in this deed, the whole of said quarter section being subject to the full incumbrance; trust deed on the west 53⅓ acres of the same to secure two notes of James H. Bowen for $5,000 each, June 9, 1871, due in one and two years, with 8 per cent., and on the balance of the quarter section a trust deed to secure three notes of Benjamin F. Guiton, dated June 30, 1871, each for $10,700, due in one, two, and three years, all with 8 per cent. The deed is dated June 4, 1872.

Q. What of those incumbrances did your bank assume and how much did it pay?

A. We took the land subject to them.

Q. How much remained unpaid at that time?

A. From memoranda I have with me I can state in round numbers it was about $15,000, in addition to the Bowen claim and the west one-third, which we lost.

Q. How much did you actually pay?

A. As I said, my impression is we paid about $15,000. I am not certain. There was one payment of $11,543 to Greenbaum.

150 Q. Can you state on which part of the land it was?

A. That was one of the Guiton notes, and consequently was on the east two-thirds; by taking that we cleared up the title to the east two-thirds and paid about 13⅔ acres on which we had no incumbrance, which was not included in this deed of trust for Mr. Holmes' benefit.

Q. Then the other $5,000 that you paid?

A. I am not testifying that we paid the other $5,000. I am only giving my recollection of it. My recollection is we paid $4,148 in addition to that. I may be mistaken about that without reference to other papers, which I have not with me.

Q. You do not wish to be understood as stating your bank paid that?

A. No, sir.

Q. You have stated the International Bank foreclosed for about $5,000 and that they sold the west 53⅓ of the 160 acres?

A. Yes, sir.

Q. How much of that 13 acres was included?

A. That was the Bowen incumbrance; there was 26⅔ acres of that included in the eighteen mortgages which we lost; we removed the incumbrance from 13⅓—13⅓ acres which we did not get in.

Q. That would be the east thirteen acres?

A. Of the northwest quarter.

Q. I understand you that you did not get the northwest quarter of the northwest quarter of this section in the 18 mortgages at all?

A. No, sir.

Q. You let Holmes have that clear in the trade?

A. Yes, sir.

Q. That was the understanding?

151 A. Yes, sir. We removed the incumbrance from 13 acres.

Q. By the payment of $11,000?

A. Yes, sir.

Q. The undivided one-half of the forty acres was included in the Picket mortgage securing these ten notes until you had made that arrangement?

A. Yes, sir.

Q. You say that the land was sold by you as trustee under the eighteen notes or under the eighteen trust deeds securing the eighteen notes?

A. Yes, sir.

Q. Can you give the date of that sale?

A. Not from memory. It is shown by the trustees' deed which is of record. The abstract will show that.

Q. Where was that sale made?

A. At the place mentioned in the advertisement.

Q. In the city of Chicago?

A. Yes.

Q. Can you remember any of the persons that were present?

A. General Geo. W. Smith was present.

Q. Do you remember anybody else?

A. I don't remember. There were a lot of people standing round that I did not know.

Q. How did Geo. W. Smith happen to be present?

A. He went there to bid the land in in case there were no bidders; to bid a sufficient sum for it for the People's Bank.

Q. Did you employ him?

A. The bank did.

Q. Did you speak to him about it?

A. Yes.

Q. You requested him to go there?

A. Yes, sir.

Q. That is the way he came to go there?

A. Yes; he was attending to some other business for the bank.

Q. You came up and told him there was to be a sale?

152 A. Yes; we consulted as to what the land was worth and he advised us as to what the land was worth.

Q. That is, before you went to the sale you and he talked it over about what you thought the land was worth—what you could afford to bid it in for?

A. Yes.

Q. Anybody else bid?

A. No, sir.

Q. In whose name was it bid in?

A. Frederick H. Piper, then president of the People's Bank.

Q. Does the bank still own it?

A. The assignee.

Q. It has not been sold?

A. It has been negotiated to be sold, but whether it has been sold or not I don't know.

Q. You mean there was a negotiation, you have heard?

A. I have heard it was negotiated to be sold and the assignee has really made a bargain to sell it, but whether that has been so or not I don't know, or whether the sale has been submitted or approved.

Q. The total amount of the eighteen notes and trust deeds is correctly stated in the agreement, I suppose?

A. Yes.

Q. I wish you would give me the items of which that amount was made up.

A. I can't give you the items any further than they have been given by Mr. Holmes, and adding interest to that it amounts to just about that sum. That makes eighty-seven thousand and odd dollars, the whole indebtedness, not $87,000. The $500 note you notice in the agreement is to be marked "A" in red ink. A special purpose was designed for that one note.

Q. Please give us the items so as to make up the $87,000,
153 as near as you can.

A. As near as I can get at it from my memory, $55,486.10 Picket paper, with interest; $10,136.11 of the Ray and Whitney paper, with interest; $4,391.53 of the Philpot paper; $11,343.13 of the Guyton incumbrance, and $4,148.54, which I am not certain whether they paid or not, which if we did not pay was taken into account on account of the $5,000 note, and $3,321.60 of the Walker paper. These added together make $89,247.07, which is more than the amount we agreed upon.

Q. What did you do with the balance?

A. Took the $4,148.54, which was property of the Bowen incumbrance, and it leaves about the same we arrived at. There were some costs, protest fees, and other items I have forgotten, but that was the amount at that time agreed.

Q. You paid out $4,000?

A. Yes; we had this sort of understanding. There was an incumbrance on the west one-third of the International Bank, which we claimed had been paid. It is not necessary to explain to you the facts under which we claimed it, but Mr. Holmes and we were both of opinion that the facts made a payment, and we contended we ought to litigate that and we did, and we were defeated. If we had not been defeated the $87,000 would have been $5,000 too much, but being defeated it was just what we agreed upon.

Q. None of this paper that went into this calculation except the Picket notes and except his you have spoken of as being prior incumbrances were any incumbrance upon any of this property at that time?

A. Yes; the Guiton notes and Bowen notes.

154 Q. I excepted them.

A. None except those.

Q. I want it clearly understood. The Picket and the notes which you have mentioned as being prior incumbrances upon this property, meaning the Guyton and the Bowen incumbrances, were the only incumbrances—that was the only part of the paper that was security upon this property at all?

A. Yes, sir.

Q. How came you to make this agreement about releasing the bank on the two notes of Picket's? I want to find out how that came to your mind.

A. It got through my mind because it was a sort of coincidence. We wanted the land to bring something at the sale, and we thought it would be fair. I first objected to releasing any of it to Mr. Holmes, but I thought at that time he had been pretty generous, and I guess, compared with the other creditors, he was pretty generous, and I thought we would release those two notes and agree to release the guaranty, deliver them up, and did so, and then made the Picket sale agree with the transaction..

Q. In other words, it was the understanding between you when the sale was made of the Picket trust deed it should be made to bring $10,000 or about that, and that therefore you would cancel $10,000 of the paper?

A. Yes; that was the understanding. In case there were no bidders he would pay more than the claim; if there was we would get our money; therefore the whole of the Picket notes was figured into the eighteen notes as a part of the consideration of the eighteen notes.

Q. The whole of the Picket notes was figured and two of
155 them were surrendered?

A. Nothing was really paid—nothing paid in any of these transactions—no money passed. If money had been paid these notes would not have been figured in. Of course, it was a mere formality to get the title into Holmes in pursuance of this agreement.

Mr. Miller: But the whole of the notes constituted a portion of the consideration of the Holmes notes?

A. Of course they did, because they were all due.

Q. The notes secured by the eighteen mortgages?

A. Yes; you understand the sale did not pay the notes—no money was paid; they stood as a claim against the land as before; this arrangement was not made for the purpose of paying the note, but to get the title in Holmes.

Mr. Hurd: I see by one of the agreements made by Ira Holmes on behalf of the Manufacturers' National Bank and by you on behalf of the People's Bank this language: "It is agreed between the People's Bank of Belleville and the Manufacturers' National Bank that the guaranty of said Manufacturers' National Bank upon eight of said notes shall be and remain binding upon said bank, and that any agreement which has been or may be made between the People's Bank and the said Picket in regard to the said Picket liability as maker or endorser of the said notes was never to be construed to release or in anywise effect said guaranty upon eight of said notes." What agreement do you refer to there?

A. There was no agreement. At that time it was contemplated there might be some agreement and these words were put in there. As you will see, if you read further on, they are to be construed
156 together.

Q. What agreement did you think might be made?

A. I thought possibly we might release Picket—might be compelled to in that negotiation in some way.

Q. How was it arranged?

A. It was not arranged at all in respect to that matter; Picket was never released.

Q. You know what Holmes did with Picket, I suppose?

A. In what respect?

Q. What arrangement he made with Picket to get the deed?

A. I know Holmes got the deed. I don't know what the arrangement was.

Q. He agreed to get the deed and got it?

A. I didn't see Picket, that I know of, more than to casually meet him. I didn't speak to him about the matter.

Q. Don't you know what Holmes was to give him?

A. I did not. Holmes agreed to get the conveyance; said it would be a matter of no difficulty; said he could get it for asking, and got it and brought it. He told me Picket was insolvent and it didn't make any difference to him whether he deeded the land or not.

Q. You have made some explanation of why you took this agreement. I wish you would state again.

A. I took that agreement for the express purpose of binding the stockholders of the bank on the guaranty.

Q. You had some doubts whether it would not release them?

A. I didn't want any doubt to creep into the affair and took every precaution I could. I refused to release the bank and would rather not enter into an arrangement, whereupon he agreed
157 to make a contract continuing the guaranty on eight of the notes, I yielding two of them.

Q. You had an idea by such an agreement as this the bank and the stockholders would be released?

Objected to.

A. I didn't know. I thought it fit to take the precaution, so no such question might arise, so that the bank could continue this guaranty.

Q. You were ready to release Picket if it was necessary?

Objected to as immaterial.

Q. You were ready to release Picket, if necessary to accomplish this purpose, if you could only get an agreement to hold the bank on its guaranty?

A. My recollection now is that Picket did not cut much figure in that transaction. Mr. Holmes represented to me that Picket was entirely and utterly insolvent, and we did not really require him as a factor in the case.

Q. You did not think it was a matter of much consequence whether he was released or not?

A. No; I did not. That is the truth about it. I do not think he cared whether he was released or not.

Q. You were willing Holmes should do what he could to get that quitclaim deed, if he only got it?

A. He had a contract to get it, telling me it would be a matter of very small difficulty; that he would get the deed and put the title in Holmes, because Picket knew we would sell him out under the trust deed and he might as well give a quitclaim deed. I wanted to be safe in that matter, and therefore made a requirement in the contract with Holmes that he should procure from Picket the title.

158 Q. Have you ever got any other deed or release?

A. I don't remember. I have an indistinct remembrance there was a release from Picket or somebody of the deed of trust, but where it was done I don't know; it was not done at my office. There was something said about releasing Picket. I think Holmes did say something about releasing Picket several times, but I don't remember having talked with Picket.

Q. What did he say?

A. Holmes may have said in this conversation that he would like to have Picket released.

Q. Didn't he say that Picket must be released?

A. I don't think he said that. I think he remarked, if I remember, that Picket would be sold out anyhow, and that he was a friend of his, and that he would give Holmes a deed, it being understood all the time we were holding the bank on the guaranty and looking to the bank only, and that was the only reliance we cared for outside of the collateral security which we took in the land. If we had got our money out of the land we would surrender all the Picket notes and other notes, and they might have what they got if we got our money out of the land which stood as collateral for the whole indebtedness.

Q. I see in the other agreement that the Manufacturers' National Bank hereby agreed that no release of a certain trust deed executed to Henry A. Picket and wife on the 5th of August, 1874, and duly recorded in the recorder's office of Cook county, Illinois, in Book 236, at page 153, shall operate as a release of the bank from 159 its guaranty of the eight notes. Does not that refresh your recollection?

A. What I was telling you I would not want to testify.

Q. That is in your handwriting?

A. Yes, sir.

Q. There must have been such a release as that?

A. No, sir; not necessarily; the trustee may have been induced to make one without my knowledge; there were various contingencies on which it might have been made. I am certain the contract was made, but I am not certain any release was given. I never saw a release of the land, although one might have been made and put on record. I never asked for one, nor did I authorize any to be made by anybody. I will not say the trustee did not make one without my knowledge.

Q. Where did you find Mr. Holmes when you commenced your negotiation with him here in Chicago in 1874?

A. I think I found him at the bank; I am not certain.

Q. What bank?

A. The Manufacturers' National Bank.

Q. Was the Manufacturers' Bank running at that time?

A. No, sir, but it had an office or place adjacent to the former banking-room.

Q. Did you understand this was in liquidation then?

A. Yes; we received notice it had closed; we didn't understand it was in liquidation, but we understood the bank had suspended and ceased doing business.

Q. You spoke of the bank having failed.

A. I think it did not go into liquidation until a receiver was appointed by the Comptroller.

Q. You spoke of the 23rd of September as the time when it failed.

A. I am speaking now from recollection of the notice the bank sent to our bank.

160 Q. That is all you know about it?

A. That is all I know about it.

Q. You were not here?

A. No, sir.

Q. You had no personal knowledge of it?

A. None, except what the bank sent.

Q. That is simply your recollection?

A. Yes.

Q. If it was a notice of going into liquidation sent to you it probably stated the time of going into liquidation?

A. I received no notice of that kind, of any formal liquidation. We received notice of the suspension of the bank—that the bank had closed its doors.

Q. Have you got that notice?

A. No, sir.

Q. If it should be the 25th or 26th of September, 1873, wouldn't you be astonished?

A. No; I would not be astonished if it was the 25th of August, because I am not endeavoring to state it within twenty or thirty days; I stated it from memory as the 23rd of September.

Q. You had, however, been aware for some time before you came up here to arrange this matter that the Manufacturers' Bank would be closing up its affairs?

A. I knew and so did our bank that the Manufacturers' Bank had suspended and ceased doing business—ceased to receive deposits and do a banking business—a considerable length of time before I came here.

Mr. Miller: You say you had received written notice?

A. A printed circular of some sort; a little bit of a statement
161 in red ink, as I remember it—printer's ink—stating the bank
had gone into liquidation—not gone into liquidation, but
suspended.

Q. Can you swear positively it did not state on the paper the bank had gone into liquidation?

A. No; I will not swear positively, because I will not attempt to remember the terms of the paper. I am stating my recollection of it. The first I knew of the bank going into liquidation was the appointment of Mr. Harvey as receiver; of that we received notice, and then we filed our claim.

Q. You knew when you were here that the bank was closing up its affairs?

A. Yes, sir; we were here for the purpose of assisting it in closing up this affair.

Q. You have spoken of the fact that 53 acres of this quarter section was lost under the foreclosure proceeding. How many of that 53 acres were included in the trust deed given to you by Mr. Holmes?

A. Our trust deed from Mr. Holmes included the south half and
the northeast quarter of the quarter section, being 120 acres north.
Of that 120 acres, one-half or $53\frac{2}{3}$, which would be $26\frac{2}{3}$, was included
in the west $53\frac{2}{3}$ acres, so that we lost $26\frac{2}{3}$ acres in the southwest quarter
of the quarter, and the balance, consisting of eighteen of these fractional
section lots, were the eighteen I sold under the deed of trust.
When we paid the Guyton claim we paid on that portion; also relieved
that portion of the northwest quarter containing $13\frac{1}{3}$ acres which
we did not get into our incumbrance—released that for the benefit of
the bank, although we never got anything back from it. We
162 took off the incumbrance, which we never got back. We had
to do that in order to get the other. It was a part of the
understanding we should.

Q. That was included in Holmes' note?

A. No, sir; it was not. It was in the Picket note, and not the Holmes note. We gave up the Picket claim and paid off the incumbrance, and lost it in order to get the balance. I would like to append to my testimony this sketch of the land.

Offered in evidence, marked "Exhibit C."

Q. In this agreement that Mr. Holmes executed on the 27th of August with the Belleville Bank it is said that the International Bank has a prior and first lien upon a portion of said land to secure the payment of some amount, said to be between five and ten thousand dollars. What portion did the International Bank have a first lien upon?

A. The west $53\frac{2}{3}$ acres.

Q. "And whereas said bank is not willing to allow said claim and believes it to be unjust and unfounded, and that the said pretended prior lien has been discharged," &c. It is provided that the People's Bank shall defend that claim if suit is brought, and whatever amount the People's Bank necessarily expends in and about the proceeding which may be had to establish such a claim Mr. Holmes shall pay, and one of the notes is set apart to provide that. It was understood that the People's Bank should take care of that claim, whatever it should amount to, wasn't it?

A. No, sir; the agreement don't say so.

Q. Don't you know that Mr. Holmes expected that you would?

163 A. No, sir; I don't know what he expected—we never agreed to it.

Q. Didn't you give a check for $5,000, and hand it to Holmes for the purpose of satisfying the claim?

A. No, sir; I never did.

Q. Didn't your bank?

A. Not that I know of. We wanted to satisfy the claim and would willingly have done it for $5,000, but the amount was much greater than that when we came to investigate it—it was way up above $10,000.

Q. Didn't you reduce that claim to $5,000?

A. We may possibly have done so in the controversy.

Q. And then after that you allowed the whole property, 53 acres, to be sold upon that incumbrance?

A. Yes, sir; because we didn't have only a deed of trust to 26 acres.

Q. Did not 53 acres that was sold include the forty acres retained by Mr. Holmes?

A. No, sir; it included 26⅔ acres.

Q. And Mr. Holmes's forty?

A. It was not his, that I know of. I don't know whose it was.

Q. It was part he retained, and which you did not get a lien upon?

A. Yes, sir; in return we paid off the incumbrance on 13⅔ acres which we ought not to have paid.

Q. Suppose Holmes' trust deed had covered the whole 53 acres; you don't mean to be understood as saying that the bank would not then have redeemed it?

Objected to.

A. Then it would have gone to us, and it would have been to our interest to redeem it.

164 Q. You would?

A. It would have been to our interest—we certainly should; not as having contracted to do it, but simply we would make something by doing so.

Mr. Mason: You have spoken of the sale which you conducted as trustee. Were these sales public ones?

A. Yes, sir

Q. Where did they take place?

A. At the north front of the old court-house or building used as a court-house before the new building was erected.

Q. Any efforts made to discourage bidders?

A. None whatever.

Q. Was it the object of the bank to get the land or to get the value?

A. No, sir; we wanted the money. I will state here that General Smith and myself consulted about the prices of the land. General Smith fixed the price he thought was fair and bid it.

Q. At the date of this trustee's sale was the People's Bank in need of money itself?

Objected to.

A. It was.

Q. What was its condition at that time?

A. It was in a very bad financial condition.

Q. An expression has been used that the Picket notes were part of the consideration for the Ira Holmes notes. Do you mean by that that the Ira Holmes notes paid the Picket notes?

A. No, sir; I mean the Holmes notes stood as collateral security for the Picket notes and all the other debts.

Q. Was there any waiver of the original guaranty on the Picket notes?

165 A. Not unless what I have testified to amounted to a waiver in law.

Q. Not unless it is so expressed in the paper?

A. Yes, sir.

Q. Did you authorize or know of Picket being released?

A. No, sir. I did not know of any release to Picket. In reference to the map, "Exhibit C," I wish to say the words in red ink below are explanatory of it, and the lots marked 4 and 9 and across that entire diagonal in pencil are the lots upon which the People's Bank paid the Guyton incumbrance, and which were not included in the Holmes deed of trust, and the lots 13, 14, 19, and 20, to the dotted line east of 14 and 20 and up to the red line north of that, is the land that was sold under the Bowen incumbrance and included in the Holmes deed of trust.

Mr. Miller: Who drew up this agreement executed between Holmes and the bank?

Q. You don't wish to be understood as saying that the Holmes notes were taken as collateral security for the Picket notes?

A. I do wish to be so understood.

Q. Here it is stated in the agreement that the incumbrances now existing upon said lands—that the notes mentioned in the incumbrances now existing upon said land—shall stand as additional security for said People's Bank as far as they go for the indebtedness to be created by the said Holmes?

A. It is all the same.

Q. One is good for the other?

A. Yes, sir. Holmes' notes are good for the Picket notes.

Q. Each is good for the other?

166 A. The Holmes deal was put in that shape so the land might be sold and whatever it did not bring recourse would be had on the other paper, on the guaranty.

Q. You mean one set of the notes stood for the other set?

A. I mean this: The bank intended to hold these notes which it had the guaranty of the Manufacturers' Bank on and refused to surrender them, and still holds them, except where they are reduced to judgment, and took the land as additional security for them or for the money which the bank owed.

Q. It was agreed in writing, you drew it up, that the Picket notes were to stand as additional security for the Holmes notes?

Objected to.

A. They should stand as securities for the money, but not as security for the Holmes notes; they all stood for the same debt.

Q. For the indebtedness to be created by Holmes?

A. That is what it says.

Q. That is what it means?

A. It means exactly what I have explained.

Mr. Hurd: You don't mean to say it was distinctly a clause any different from what is expressed in the agreement?

A. There is no such thing as Holmes' debt; the debt had been made long before that; it was a debt that existed long before the notes were made and the deed of trust was executed, and when we refer to it we mean as the witness of a debt already existing.

Q. When Holmes executed the notes to the bank that created a debt to the bank? 167

A. No, sir; it did not; the debt was already created; not a dollar passed on that.

Q. He gave his notes?

A. But not a dollar passed. He simply gave his notes to secure a debt already existing.

Signature waived.

168 Ira Holmes, being recalled, testified as follows:

Mr. Hurd: Did you send a printed circular to the People's Bank after your bank went into liquidation?

Objected to as immaterial, irrelevant, and not cross-examination.

A. Notice was sent to all the correspondents of the bank that on the 25th of September the bank went into liquidation.

Q. Did you send out any other printed notice or any notice of suspension except that?

Objected to because the notice should be produced.

A. Not that I know of.

Signature waived.

169 IRA HOLMES, recalled, testified as follows:

Mr. HURD: I wish you would tell the conversation which occurred between you and Mr. Thomas in reference to the arrangement which resulted in the written agreement given in evidence, and especially what was said in reference to the Picket notes in connection with the security to the notes. I would like to have you give the language used by you and by Mr. Thomas or whoever acted for the bank, as near as you can.

A. Shortly after the Picket notes became due and we were not paid by the bank, Mr. Thomas came up here, representing the People's Bank of Belleville, to effect a settlement of all their matters and of the indebtedness that they held against the Manufacturers' National Bank. The Manufacturers' Bank from time to time had borrowed large sums of money of them by rediscounting the paper, and among the paper which they had at this time which was not paid was the $50,000 Picket notes, some Ray and Whitney paper, some Philpot paper, and some Sam. Walker paper. I think none of it was considered very good, except the Picket paper was considered secured. Personally I was not in very good shape myself, and Mr. Picket and I together owned the 160 acres—the northwest quarter of section 10; upon that there was an incumbrance of $10,000, which covered the east 106⅔ acres. It was for Picket to pay one-half and myself one-half on the west 52⅓ acres. Two notes of James H. Bowen, of $5,000 each, had been pledged to the International Bank to secure a loan to Picket of $5,000 with which to pay his one-half, I having paid mine. I said to Mr. Thomas, You have got this Picket paper, subject to an incumbrance that Picket owes of 170 $10,000, all told, and the Walker and other paper I have mentioned I only owed on my undivided half, $5,000. I am not in shape to pay my $5,000 now, and it is past due, and if you will take up the $15,000 incumbrance—$10,000 for Picket to pay and $5,000 for me—I will go and make a trade with Picket and get the title to the whole property; then, instead of 80 acres, which you now hold, I will give you 120 for the $50,000 Picket, $10,000 Picket and I owed together, $5,000 Picket owes the International, and including that all this other paper with the bank's guaranties on them. All I want for giving you up my forty is that you clear my other forty, so I can use that with my other creditors. That they thought was a clever arrangement, and assented to it at once, and in pursuance of that they went and paid off the mortgage on the east 106 acres. Mr. Thomas and Mr. Piper authorized me to go to the International Bank and tender to them $5,000 and interest up to the date of the tender in payment of that. The International Bank refused. We went on and closed the trade up. We made this contract, and subsequently Mr. Thomas said to me, "Why are you buying a lot of this paper? You will never get any money whatever on your own individual property, and it is a fair thing, the bank's guaranty standing on this paper. It is as much your individual interest as ours, and we want the guaranty of the bank to stand there, and every dollar that we collect as against the bank on the guaranty we

will endorse upon this $87,000 you give us, which is part
171 of the Picket indebtedness." I said, "Very well." Of course
Mr. Picket would understand he was released, because I would turn him out $50,000 of his paper in payment, and between Picket and I it would be understood it was paid, but between the Bank of Belleville it could be arranged to keep the guaranty good. I was willing it should be done; that is why the contract was made. The first trade was made without any reference to the bank's guaranty at all, but it was after that—after we had made the guaranty—they said to me, That is something of a protection for you as well as ourselves—in fact, protects you more. I paid Picket $1,100 an acre. The land was worth $1,100, and the security they were getting was considered at that time to be worth at least $132,000. The whole trade was consummated except on the 106⅔ acres. They paid the notes and did not get a release deed and put it on record. When the International Bank beat them in the suit, they really beat the International, because they got just what they claimed, amounting to $7,200. The land had depreciated so that the $7,200 was just about the market value of their 26 acres, and they didn't care to buy 26 acres at the market value, inasmuch as they said the contract did not compel them to.

Q. So they let your 26 acres go?

A. Yes; got their own, if they had the whole 53 acres, and the agreement was that they would give me the 40 acres free and clear. All I ever got or was to get from the People's Bank for personally protecting them on all this paper they had, amounting to $82,000, was that they should pay $5,000 of my indebtedness and give me 40 acres clear, and they failed to do it.

172 Q. I wish you would tell me, if you can, whether there was a written release from the People's Bank to Picket or not.

A. I can't say.

Q. Tell what you know about it, or if you know anything or remember anything about it.

A. The fact of the second contract of September 2nd satisfies me they must have given Picket a release.

Q. In your arrangement with Picket I want you to state whether Picket was to be released or not.

A. Positively and unequivocally.

Q. Did you communicate that to Mr. Thomas?

A. They understood that thoroughly; they were not to pursue Picket in any way, shape, manner, or form; they knew perfectly well the $50,000 was a part of the consideration for which I was to get the deed from Picket.

Q. Was that so talked?

A. Yes; so talked and so understood; the paper was simply held for the purpose of holding the guaranty of the bank.

Q. Can you tell where Picket is?

A. In Pennsylvania somewhere. I have not been able to find out just where.

Q. Do you know anybody that I can find out from?

A. Mr. Philpot can tell you.

Q. Is he here?
A. He is here in town.
Q. Do you know anybody else?
A. He would be most apt to know of anybody.

Adjourned to 2 o'clock p. m. Monday, June 27th, and further adjourned to 10 o'clock June 29th.
Signature waived.

173 Testimony taken before Hon. H. W. Bishop, master in chancery, June 29th, A. D. 1887.

Present: Mr. Miller, Mr. Mason.

174 Mr. MILLER: Conveyance No. 3 of the abstract given in evidence shows a trust deed executed by Henry E. Picket and wife to Joseph A. Holmes, dated August 5, 1873, recorded August 6, 1873, in Book 236, page 153, to secure payment of $50,000 according to ten notes given, and conveys the undivided one-half (½) of the northwest quarter of section ten (10), township 37 north, range 14 east, of the 3rd P. M., in Cook county, Illinois.

Conveyance No. 5 of the same abstract shows trustee's deed by Joseph A. Holmes, trustee, to Ira Holmes, dated September 30, 1874, recorded October 3, 1874, in Book 445, page 234, — conveys the undivided one-half (½) of the northwest quarter, section ten (10) north, of range 14 east, in pursuance of the power and authority invested by virtue of the trust deed above mentioned.

Conveyance No. 6 shows a deed from Henry E. Picket and wife to Ira A. Holmes, dated September 1, 1874, recorded September 3, 1874, in Book 355, page 31, conveying by quitclaim all the right, title, and interest of the guarantor in and to the undivided one-half (½) of the northwest quarter of section ten (10), township thirty-seven (37), range fourteen (14) east, of the 3rd P. M., in Cook county, Illinois.

175 Conveyance No. 7 is a trust deed executed by Ira Holmes and wife to Charles W. Thomas, dated September 1, 1874, recorded September 3, 1874, in Book 111, page 598, to secure the payment of $5,000, according to note given, and conveys six and two-thirds acres (6⅔), parcel of the northeast quarter of the northwest quarter of section 10, township 37, range 14 east, of the 3rd P. M.

The same abstract shows seventeen other trust deeds, bearing the same date and recorded September 3, 1874, each for 6⅔ acres, being a parcel of the said land in said quarter section, to secure a promissory note of the said Ira Holmes, in accordance with the terms of the contract between Ira A. Holmes to the People's Bank, as given in evidence.

The abstract also shows eighteen (18) trustee's deeds made by Charles W. Thomas to Frederick H. Pieper, dated January 28, 1876, each purporting to convey the 6⅔ acres embraced in the trust deed of Ira Holmes to Charles W. Thomas, and purporting to be made under and in pursuance of the power of sale contained in the trust deed from Holmes and wife to Thomas.

No. 1 of the abstract continued is a deed from Frederick H. Pieper and M. O., his wife, to the People's Bank of Belleville, dated May 10, 1876, recorded June 2, 1887, whereby the guarantor sells and conveys to the People's Bank of Belleville the east one-half 176 (½) of the northwest quarter of the southwest quarter of the northwest quarter of section 10, township 37 north, range 14 east, the said land being the same purchased by said Pieper from Charles W. Thomas, trustee, under eighteen deeds of trust on December 29, 1875, and by said Pieper held in trust for said bank; consideration, $10.

177 Deposition of Henry E. Picket, taken before Henry W. Bishop, master, on behalf of the defendants, on July 11th, 1887, at Chicago.

Int. 1. Please state your name, age, residence, and occupation.

A. Henry E. Picket.

Q. Where do you reside?

A. I reside in Newcastle, Pennsylvania.

Q. Did you reside in Chicago in 1873 and '74?

A. Yes.

Q. Are you the Henry E. Picket who gave ten notes of $5,000 each, payable to your own order, and secured by a mortgage upon real estate in this county and which was discounted by the Manufacturers' National Bank and finally got into the hands of the People's Bank of Belleville?

A. I gave notes aggregating $50,000. I don't remember about the amount of each note. That was in the fall of 1873, I think, about September.

Mr. Miller: They were dated the 5th of August?

A. Yes; these notes afterwards got into the hands of the People's Bank of Belleville.

Mr. Hurd: Do you know Mr. Charles W. Thomas?

A. I did know him, sir, in the fall of 1873–'4.

Q. In what connection?

A. As agent and attorney of the People's Bank of Belleville with regard to these notes.

178 Q. Had you any connection with Mr. Thomas as such agent in the fall of 1874? If so, state what occurred between you and him.

—. I had a great many interviews—a good deal of negotiations—with Mr. Thomas in regard to these notes, between the time and what was known as the panic in 1873 and some time in 1874, with a view to the payment or cancellation or the discharging of these notes, and did finally make an arrangement with him to turn over to him the land on which these notes were secured in consideration of being released from my other payments. Just what date that occurred I could not tell you; some time in 1874.

Q. Was the land turned over in any way?

Objected to; if it was there is a record of it.

A. Yes.

Q. You made a deed of the land in question to Ira Holmes, which deed is dated the 1st day of September, 1884, and acknowledged the 2nd day of September, 1884. Had that deed anything to do with that arrangement?

A. That deed was in consideration of my exemption or release from the payment of these notes—that is, I made the deed about that time or some time that year. I could not have stated who the deed was made to. My impression was it was made to Ira Holmes' wife; possibly I may be mistaken; it was either Ira Holmes 179 or his wife. That deed was made at the request of Mr. Thomas or the Bank of Belleville and was in consideration of my exemption from the payment of these notes.

Q. Was that the understanding between you and Mr. Thomas?

A. Yes.

—. He acting in behalf of the bank?

A. Yes.

Mr. MILLER: Did you at that time know anything about an agreement that had been made between Mr. Ira Holmes and the People's Bank, in writing, by which Mr. Thomas was to give his notes for $87,000 in place of some other notes and to secure his new notes by a trust deed upon this land, together with 40 acres of other land (of his own land), making 120 acres in all, to secure these new notes?

A. I knew there was some arrangement between Mr. Thomas and Mr. Holmes, but whether I knew anything about the details of it—whether I knew and have forgotten—I don't know. I could not swear what the arrangement was. I knew there was some arrangement between them. Very likely I may have known all the particulars up to that time.

Q. You executed this deed to Mr. Holmes?

A. I executed this deed as directed by Mr. Thomas; I could not swear whether to Mr. Holmes or Mr. Holmes's wife; perhaps 180 I am mistaken and it was given to Holmes; it was given to either Holmes or his wife. I know that. It was a good while ago, and I had dropped the thing out of my mind altogether.

Q. There has been something said about your insolvency at the time. How was that?

A. I was in bankruptcy after that time—not at that time, though.

Q. How was it at that time? Were you making any struggle?

A. Yes; I was striving very hard and had been for a year to get through with my difficulties without going into bankruptcy; didn't want to go in, but found it was necessary subsequently to do so. I was struggling under a load of obligations and debts. It was pretty hard to take care of at that time. I was very anxious to get this transaction made with Thomas; had been negotiating with him for a long time—a good many months; had been talking about it a great many times, and I think we had some correspondence. I was there frequently and saw him a great many times about it. I was very anxious to make that arrangement and was trying to make that arrangement with other creditors or make some arrangement.

I was striving very hard to get that arrangement made with
181 him. I was very anxious to get it done.

Q. And that was consum-ated by your making this deed, was it?

A. Yes, sir.

Cross-examination by Mr. MASON:

Q. Mr. Picket, how did you happen to come to Chicago to testify in this case?

A. At the request of Mr. Hurd.

Q. Was that request indicated in writing?

A. Yes, sir.

Q. Did you have one or more letters from him?

A. Well, now, I had one, to which I replied, and then I had one after that.

Q. Have you those letters with you?

A. No, sir; I have not.

Q. Can you produce them?

A. I cannot produce them to-day, sir.

Q. Will you send them to the master's office?

A. Yes, sir; I can.

Q. Will you do so?

A. Yes.

Q. Did you leave them at home?

A. Yes; I left them in my office.

Q. Did those letters show what Mr. Hurd wished you to testify to?

Mr. HURD: I object. The letters will show for themselves.

A. I can answer best by telling what my recollection is
182 about the letter. Of course, I did not pay any specific attention to it. In the first letter Mr. Hurd stated that he had written me a letter in the care of (if I remember) one George Y. Sherman, who was once a partner of mine some years ago and now lives in the East, and spoke of a letter from Ira Holmes, of which he says, "I inclose a copy in this letter;" and he did inclose a copy of this letter, marked copy. It was a short letter, in which he stated he would be glad if I would give Mr. Hurd and [any] information regarding our old quarter section of land—section 10, 37, 14—the quarter section of land in question. Mr. Hurd inclosed that and, as I said, stated he had written me a letter in care of Mr. Sherman, and wanted my testimony in regard to the transaction with the People's Bank of Belleville regarding these notes. That was the substance, I think, of that letter. I replied to that and told him that I did not remember having any papers. I don't know but that I told him I would look for papers; I did not remember whether I had any or not; that I would come to Chicago at their expense for that purpose any time upon reasonable notice—a few days' notice. That was the substance of my answer. In reply I got
183 a letter from Mr. Hurd, who had the time fixed and the day, and he said if I came I must come by that time. I replied that I would come and be here on this day. That is the substance

of the correspondence. I have no doubt I can lay my hands upon those two letters. I have no objection to producing them.

Q. Can you produce the letter which you received from Mr. Holmes?

A. That was inclosed in Mr. Hurd's letter. Yes; that is with the others.

Q. Will you send that on?

A. Yes.

Q. Did this letter of Mr. Hurd's state what he wished to prove by you?

A. Now, I cannot tell you any more definitely than I have told you in regard to this matter of the People's Bank of Belleville. I think he said he was attorney for some of the stockholders of the Manufacturers' Bank, and wanted to prove by me what arrangement was made between Mr. Thomas and me in regard to these notes.

Q. What was the arrangement with you about coming—about attending here in this case?

A. That he should pay my expenses.

Q. Is that all?

A. That is all I asked him to do.

184 Q. With whom have you conversed since you came here to refresh your recollection?

A. Mr. Hurd and Mr. Jonas Hutchinson.

Q. Mr. Holmes?

A. No, sir.

Q. You have not seen him?

A. No, sir.

Q. In 1873–'4–'5 you were a resident of Chicago, were you not?

A. Yes.

Q. And Mr. Thomas was a resident of what place?

A. Belleville, I think, in this State.

Q. Do you know how many times you saw Mr. Thomas?

A. I do not; I could not undertake to say.

Q. Can you give the dates of any of the occasions?

A. No, sir; it would be impossible.

Q. Have you any letters from Mr. Thomas?

A. I don't think I have, sir.

Q. Are you sure that any letters passed between you?

A. No, sir.

Q. Have you any writing of any kind or description relating to the release of these notes?

A. Not that I know of.

Q. Was there one ever given?

A. I could not tell you; if there was I don't remember.

Q. What is your best recollection on that subject?

A. My best recollection would be that there never was any written release. That would be my best judgment. I would not be positive about that. 185

Q. Why were not the notes surrendered?

A. I could not tell you that.

Q. You are a business man, Mr. Picket—you were then?

A. Yes, at that time.

Q. As a matter of business, when you are released from a note do you not expect the note to be canceled?

A. Yes, unless there are some intervening circumstances.

Q. What were the intervening circumstances, if any, in this case?

A. You must not expect me to be very explicit about these things; the main thing with me was to get rid of that liability, and these notes were not given by me to the People's Bank of Belleville, they were given by me to the Manufacturers' National Bank or to Mr. Holmes, and my best recollection is there was some transaction between Mr. Holmes and Mr. Thomas by which they expected to accomplish some purpose; what that was I don't know. There may have been some reason why they were not ready to deliver these notes. I don't know that I asked them to deliver them; I wanted to be released from the payments.

Q. Did you not wish some satisfactory evidence of that release?

186 A. I presume I had evidence satisfactory to me at the time.
I had Mr. Holmes and Mr. Hutchinson. Mr. Hutchinson was at that time agent and attorney for Mr. Holmes.

Q. You think now that you were released?

A. Yes; I think so.

Q. That is a matter of some importance.

A. That is my best recollection. I think both Mr. Holmes and Mr. Hutchinson were present when the transaction was made; that is my best recollection; I have no doubt that it is true.

Q. Where do you think this transaction occurred?

A. I am inclined to think the final transaction was made at Mr. Holmes's house, at the corner of 39th St. and Michigan Ave.; that is my best recollection.

Q. What is your best recollection as to the time when this occurred?

A. The best I could come to that would be some time in 1874; if it was not for the deed stating—if it had not been stated that the deed was made September 1, 1874, I should have thought that it was earlier than that; that is undoubtedly about the time.

Q. Before you went into bankruptcy?

A. Yes.

Q. It was a verbal statement?

A. I have no papers that I can put my hands on now.
187 I don't know whether I had any papers or not. I presume I
had not; am inclined to think I had not.

Q. You have not had much occasion to refresh your recollection on this subject?

A. I have not thought of it in ten years until I received Mr. Hurd's letters.

Q. Some mention has been made of your having gone into bankruptcy; was it before or after the transaction of which you speak?

A. It was after the transaction I went into bankruptcy.

Q. You think it was distinctly unders-ood at the time that you were released?

A. I have not a particle of doubt of that, sir.

Q. How long ago has it been since that occurred; that was 1874?

A. About thirteen years, I suppose.

Q. And you have not had occasion in this intervening time to refresh your recollection on the subject?

A. No, sir; have not looked after it or thought about it to my knowledge.

Mr. Mason: Mr. Picket, if you found out that you had stated under oath in 1875 that this was still *an* subsisting indebtedness you would be convinced that you were right then and wrong now, would you not?

188 A. Everything else being equal, my recollection ought to be better then than now.

Q. You have not had occasion to refresh your recollection since that time?

A. No, sir.

Q. So that probably your knowledge of the facts was fresher in 1875 than in 1877?

A. That would be a natural conclusion.

Q. You have been in bankruptcy more than once?

A. Twice, sir.

Q. Two or three times?

A. Twice.

Q. When was the first time?

A. In 1874—the fall of 1874.

Q. Was that the first time?

A. Yes.

Q. The second time?

A. In 1878 or 1879. I think 1878, the year the bankrupt law went out of existence; that is the year.

Q. Mr. Picket, your affairs and the bank's and Ira Holmes' were so intermingled that it was difficult for you to keep track of them, wasn't it?

A. I have not tried for a good while. They were somewhat mixed up at one time.

—. I want to refresh your recollection, Mr. Picket. On the 1st of April, 1875, you made oath before H. N. Hibbard, register in
bankruptcy, that the petition in bankruptcy and the schedule
189 annexed was a statement of all your liabilities in accordance
with the act of Congress. Do you remember some such occasion as that and making such an oath?

A. I don't explicitly remember it. I presume it is correct. I presume I made it. I went through the formula of the bankruptcy proceeding.

Q. Is this your signature (handing paper to witness)?

A. Yes.

Q. And this is your signature also (indicating)?

A. Yes.

The page referred to is headed "John M. Wheeler, Chicago; name of creditor.

Q. Mr. Pickett, I will ask you if you had any other transaction with the People's Bank of Belleville and C. M. Thomas, except the one you have referred to?

A. None that I recollect of.

190 Q. Under this list of liabilities appears under the head of "Names of creditors, C. W. Thomas, attorney;" under the head of "Residence and occupations, Belleville, Illinois;" under the head of "Amount, $40,000;" under the head of "When and where contracted, August 5, 1873;" under the head "Nature and consideration of the debt, balance of $50,000 and interest secured by trust deed, which has since been foreclosed, endorsed by Manufacturers' National Bank, 8 notes, $5,000 each." Does that refresh your recollection somewhat on this subject?

A. I presume those are the same notes referred to.

Mr. Schuyler: You say that this transaction, the transaction connected with this release, was down at Mr. Holmes's house at 39th street?

A. I think the final understanding was down there.

Q. The final arrangement and agreement?

A. Yes; I think so; that is my supposition.

Q. State who was present.

A. Mr. Thomas, Ira Holmes, Jonas Hutchinson, and myself.

Q. Have you any recollection that Mr. Thomas was there?

A. No distinct recollection about either of the parties.

Q. You would not swear that any of them were there?

A. No, sir; I have no doubt that it is as I stated.

Q. Mr. Picket, this refers to the transaction you were asked about just now?

A. I presume it refers to these notes there; no other notes I remember of.

191 Mr. Mason: We introduce in evidence a certified copy of the oath of the witness taken before H. N. Hibbard, register, April 1, 1875, and Schedule A 3, containing statement as to these notes.

Redirect examination:

Mr. Hurd: Mr. Picket, have you any explanation as to how it came that this indebtedness was put in here in the name of C. W. Thomas, attorney, or was put in at all?

A. I see the statement there says that that is a balance due on the foreclosure. I assume, although I don't recollect about that positively, that after this transaction was made they went on and made a foreclosure of this trust deed, and probably bought that land at about $10,000, leaving this $50,000 unpaid, so far as the face of the transaction would show. I don't know of any reason why I should have stated $40,000 instead of $50,000. I can explain the transaction a little further, perhaps, if it is desired. As I have stated, I was under a great deal of embarrassment at that time—was trying to get along, and acting on the advice of Mr. Bisbee, of the firm of Munroe, Bisbee & Ball. Mr. Bisbee was acting for me. He came to the conclusion that the only way to get me out of the difficulty was to go into bankruptcy, and he suggested the best plan was to get an involuntary proceeding, 192 and Mr. Bisbee got this proceeding; perhaps saw these parties—Thomas and others. I know he got this involuntary proceedings in bankruptcy against me put in everybody he could find—put in Thomas, I presume. These papers not being surrendered, I suppose he treated them as outstanding debt. Whether they were treated that way or not, Thomas and I made a settlement, by which I was to be released from that paper. There is no question about that. I remember it distinctly. I was struggling under a load and was anxious to get rid of that. That part I remember distinctly, and how well I felt after I got it done. The subsequent particulars I don't remember; it has gone out of my mind. I had forgotten about the mortgage being foreclosed until I saw the balance due on that foreclosure. I think Albert Holmes was trustee of that mortgage, and I think he did advertise and sell the land under that mortgage.

Mr. MASON: Did Mr. Bisbee make this list or you?

A. I made the list. That list is in the handwriting of my bookkeeper.

Q. Why did you swear that that was an outstanding liability?

A. I can't tell you why I did. It was, I suppose, in fact, the notes were out.

Signature waived.

193 *Oath to Schedule A (as Approved).*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

On this first day of April, A. D. 1875, before me personally came Henry E. Picket, the person mentioned in and who subscribed to the foregoing petition and to the schedule marked A, thereto annexed, and who, being by me first duly sworn, did declare the said schedule as composed of fifteen sheets of paper, respectively, indicated thus, 4 A 2, 8 A 3, 3 A 5, to be a statement of all liabilities in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

H. N. HIBBARD, *Register.*

194 SCHEDULE A 3.—(As approved.) Sec. 5015, U. S. R. S.—Form No. 408.

SCHEDULE A 3.

In the Matter of HENRY E. PICKET, Bankrupt.

Creditors Whose Claims are Unsecured.

N. B.—When the name and residence (or either) of any maker, endorser, or holder of any bill or note, etc., are unknown the fact must be stated, and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property. The nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case and the place where such indebtedness accrued.

Reference to ledger or voucher.	Names of creditors.	Residences and occupations.	Amount.		When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as copartner or joint contractor with any other person; and, if so, with whom?
			Dollars.	*Cts.*		
	F. Graves	Chicago	25	00	Aug. 19, 1874, Chicago	An acceptance for labor under building contract with Ward, Stephens & Co.
	James McCormick	do.	30	75	Sept. 12, " "	Same.
	Pat. Sheridan	do.	24	87	Oct. 15, " "	Same.
	N. S. Anderson	do.	30	65	Unknown, "	Bal. of ac't. Due bill.
	McClellan & Jenkins	do.	81	40	" "	Balance of ac.
	Fritz Kniff	do.	197	37	" "	In judgment (appealed).
	Christ. Hayan	do.	126	85	" "	do. "
	G. F. Harding	do.	100	00	" "	do. "

SCHEDULE A 3.—Continued.

Reference to ledger or voucher.	Names of creditors.	Residences and occupations.	Amount.		When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as copartner or joint contractor with any other person; and, if so, with whom?
			Dollars.	*Cts.*		
	N. E. Peterson	Chicago	20	55	April 16, 1874, Chicago	Putting in water service. In judgment.
	Jas. Smalley	do.	40	00	June 16, " "	Appeal to circuit court. In judgment.
	J. L. Pattison	do.	79	40	Unknown, " "	In judgment.
	Nat'l B'k Commerce	Green Bay, Wis.	157	30	Sept. 9, '74, "	Same.
	Nelson Bros.	do.	100	00	Dec. 29, " "	Same.
	Thos. Nelson	do.	40	00	Jan'y 11, '75, "	Same.
	E. Hamilton Hunt	do.	1,065	60	July 28, '74, with int., Chicago	Same.
	195 Frank Ressick	Chicago	10	35	Dec. 22, 1873, Chicago	Acceptance for labor.
	Henry Brinkman	do.	14		Nov. " " "	Same.
	Henry Teeley	do.	55		Dec. 24, " "	In judgment.
	E. A. Porter & Co.	do.	14	75	" 29, " "	Acceptance for labor.
	John Gillespie	do.	27	65	Jan'y 29, 1874, "	Same.
	Z. A. Townsend	do.	30		Feb'y 3, " "	"
	Thos. McCarty	do.	10	93	" 6, " "	"
	J. H. Mudgett	do.	56		" 10, " "	"
	Wm. S. Rutledge	do.	17	50	" " " "	"
	G. F. Gherke	do.	100		" 18, " "	"
	G. W. Moulton	do.	50		M'ch 17, " "	"
	John Brady	do.	50		" 21, " "	"
	N. B. Tolson	do.	17		May 6, " "	"
	Wm. Bollen	do.	24	47	" 28, " "	"

Geo. P. Shillito	do.		6 50	June 1,	"		"
S. Elson	Chicago		10 00	Aug. 12,	"		"
196 C. Dempsey	"		160	Oct. 27, 1873,	"		In judgment.
Fred. Lane	"		72 15	Nov. 3, "	"		do.
A. D. Eddy	"		164 32	" 5, "	"		In judgment.
S. G. Moreau	"		32 23	" 10, "	"		An acceptance for labor under building contract with Ward, Stevens & Co.
J. H. Mudgett	"		7 50	" 11, "	"		Same.
A. J. White	"		30 00	" 8, "	"		Same.
F. N. Sheppard, use of Jno. H. Green							In judgment.
Joseph Hill	"		30 00	" 12, "	"		Same.
B. L. Anderson & Co.	"		810 00	" 1, "	"		In judgment.
W. J. Briggs	"		50 00	" 19, "	"		do.
Geo. G. Briggs	"		50 00	" " "	"		do.
S. S. Buffum	"		100	" 22, "	"		do.
Walworth, Brooks & Co.	"		150	" 26, "	"		do.
G. W. Moulton	"		30	Dec. 1, "	"		Acceptance for labor.
Wm. Tanney	"		6 60	" 5, "	"		Same.
Robert Ellis	"		35 65	Nov. 1, "	"		Same.
J. W. Butler	"		146 66	Dec. 22, "	"		Same.
197 E. W. Blatchford & Co.	"		150	Oct. 10, "	"		An acceptance for materials furnished uuder building contract with Ward, Stevens & Co.
J. Nixon	"		30	" 21, "	"		An acceptance for labor under building contract with Ward, Stevens & Co.
Do.	"		40	" " "	"		Same.
Unknown	"		15				Due bill for labor under building contract with Ward, Stevens & Co.
Samuel Rutherford	"		55	" " "	"		An acceptance for same.
S. Cales	"		40	" 24, "	"		Same.
Wm. Sears	"		5 50	" " "	"		Same.
C. O'Neil	"		15 75	" 27, "	"		Same.
Martin Hastings	"		33	" 20, "	"		Same.
Kennedy & McClowry	"		210	" 27, "	"		Same.
M. W. & F. Lester	"		250	" 22, "	"		Same.

SCHEDULE A 3.—Continued.

Reference to ledger or voucher.	Names of creditors.	Residences and occupations.	Amount.		When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as copartner or joint contractor with any other person; and, if so, with whom?
			Dollars.	*Cts.*		
	John Hall	Chicago	28	65	Oct. 29, 1873, Chicago	Same.
	Alex. Stevens	"	15	35	" " " "	Same.
	Henry Teeley	"	85		Nov. 3, " "	Same.
	Wm. Spriggs	"	15	10	Oct. 31, " "	Same.
	Leguald & Skane	"	1,360		Sept. 27, " "	Same.
198	Gibbons L. Kelty *et al.*	New York	2,614	58	Oct. 14, 1874, "	In judgment.
	John Miller *et al.*	Chicago	5,162	50	Unknown, "	Same.
	Leguard & Skane	Waukegan, Ills., bricks	1,397	89	Sept. 27, '73, "	Same.
	George B. Griffin	Chicago, real estate	3,723	13	June 9, '74, "	Judgment note, in judgment.
	Sarah J. Knott	"	2,345	00	Unknown, "	In judgment.
	F. C. Taylor	" banker	5,000	00	Aug. 15, '73, "	Endorsed by H. H. Honore.
	Do.	" "	5,000	00	" "	" "
	Frank Stauber	" hardware	20	00	Unknown, "	Bal. of ac.
	H. Rehwoldt	" architect	325		" "	do.
	Buxclay, Voorhies & Co.	" bankers	618	99	" "	Note.
	Fourth Nat'l Bank	" about	1,250		" "	"
	R. R. Day	" stone dealer	300		About "	" in suit.
	Pyne & Flannagan	" packers	400		" "	Bal. of ac.
	Wm. Vale	"	1,000		" "	Borrowed money.
	Robert Ellis	Wallingford, Conn.	1,400	50	"	" "
199	J. B. May & Co.	Chicago, jeweler, about	225	00	"	Note.

Central Nat'l Bank	Kentucky, 5 years	5,000 00	Aug. 5, 1873,	“		Secured on the undivided one-quarter of blocks 1, 2, 3, 4, & 7, in Clifford's Addition, and the N. W. ¼ of S. E. ¼, sec. 1, 39, 13. Trust deed foreclosed.
James R. Warner	Chicago, 1 “ real	5,000 00	do.	“		
Edgar Heuton	“ 5 “ “	5,000 00	do.	“		
Robert Mitchell	Cincinnati, O.	6,250	do.	“		
Humboldt Savings Bank	Erie, Penna., 5 years	5,000	do.	“		
Do.	“ 5 “	5,000	do.	“		
Citizen's Nat'l Bank	Faribault, Minn.	5,000	do.	“		
First “ “	Paxton, Ills., 5 years	5,000	do.	“		
Do.	do. 3 “	5,000	do.	“		
Grundy Co. Nat'l Bank	Morris, Ills., 5 “	5,000	do.	“		
Do.	do. 5 “	5,000	do.	“		
Do.	do. 3 “	6,250	do.	“		
C. S. Hall & Co.	Chicago, 5 years, coal	5,000	do.	“		
Unknown		72,500	do.	“		
Grundy Co. Nat'l Bank		1,354 96	do.	“		In judgment.
200 John N. Wheeler	Chicago	2,100 00	Sept. 10, 1873,	“		Note made by H. E. Pickett *vs.* Philpot.
Henry G. Harvey	Erie Co., Pa.	2,500	May 30, “	“		Note, 1,000, endorsed thereon.
Page & Sprague	Chicago	2,679	“ 4, 1874,	“		“
A. L. Hale & Bro.	“ furniture	639 70	“ 25, “	“		“
Corn Exchange Nat'l Bank	“	200	June 6, “	“		“
Cook County Nat'l Bank	“	153 50	July 1, “	“		“
Do.	“	3,460	“ “	“		“
C. T. Bowen	“	8,666 67	June 28, 1873,	“		“ endorsed by H. E. Pickett & J. E. Tyler.
Do.	“	8,666 67	do.	“		Note endorsed by H. E. Pickett & J. E. Tyler.
James E. Tyler	“	8,666 67	do.	“		Note endorsed by H. E. Pickett & J. E. Tyler.
C. W. Thomas, att'y	Belleville, Ills.	40,000 00	Aug. 5, 1873,	“		Balance of 50,000 & int. sec. by T. deed, which has since been foreclosed, endorsed by M'f'g Nat. Bank, 8 notes, 5,000.
Samuel Ramsey	Chippewa Falls, Wis.	3,251 43	Nov. 5, 1874,	“		In judgment.
W. A. Merriweather	Louisville, Ky.	3,392 21	June 1, 1875,	“		do.
The Marine Co.	Chicago	1,620 25	Oct. 8, 1874,	“		do.

SCHEDULE A 3—Continued.

Reference to ledger or voucher.	Names of creditors.	Residences and occupations.	Amount.		When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as copartner or joint contractor with any other person; and, if so, with whom?
			Dollars.	*Cts.*		
	John Miller *et al.*	Chicago, banker	3,121	07	Nov. 1, 1873, Chicago	In judgment { Paid Oct. 11, '73, $400. Paid Ap'l 28, '74, $2,200.
	Christian C. Garber	"	1,717	28	Aug. 11, 1874, "	do. against Pickett & Philpot.
201	E. F. Hollister & Co.	" carpets	407		Jan'y 21, '74, "	Note, bal. of ac.
	W. B. Mayhem	" contractor	200		" 13, " "	" for work.
	Patrick Kelly	" sewer builder	325	35	Feb. 11, '74, "	" for building sewer.
	Clowry Bros. & Reid	" contractors	407	10	" 21, " "	Judgment note for stone.
	Cook Co. Nat'l Bank	"	3,460		" 25, " "	Note.
	Stanton & Co.	" grocers	100		M'ch 3, " "	"
	E. Jones	"	90		" 25, " "	"
	Scott & Weigley	Wyoming, Ills., bankers	150		" 15, " "	"
	Sam'l Patterson	Chicago, carpenter	100		May 16, " "	" drawn by Philpot & Picket.
	Wm. R. Page	" attorney	1,200		" 20, " "	" guaranteed. { H. E. Picket, S. B. Gaskins.
	Third Nat'l Bank	"	1,000		Aug. 27, '73, "	" $380 endorsed, ac. paid.
	Jno. A. Elison	" auctioneer	612	37	Ap'l 4, 1874, "	" endorsed by Ira Holmes.
	Marine Company	" bank	1,500		July 17, 1873, "	" in judgment.

Blanchard, Barland & Co.	"	lumbermen	1,000	Oct. 7, 1873,	"	-------	"	in suit against W. S. Babcock, endorsed.
Wm. J. Tewkesbury	"	attorney	189 20	M'ch 5, 1874,	"	-------	"	
Wm. R. Page	"	do.	1,200	May 20, '72,	"	-------	"	

[Written across the face from folios 194 to 201, inclusive:] Henry E. Picket.

202 , NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true copy of Schedule A 3, consisting of 8 sheets, and of the oath to schedule of liabilities in the matter of Henry E. Picket, bankrupt, in bankruptcy, as appears from the records and originals thereof now in my custody.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this eleventh day of July, A. D. 1887.

WM. H. BRADLEY, *Clerk.*

203 "EXHIBIT A."

Whereas Henry E. Picket, on the 5th day of August, A. D. 1873, made his certain ten promissory notes of that date, each for $5,000, all payable to his own order one year after the date thereof at the Manufacturers' National Bank of Chicago and all bearing interest at the rate of ten per cent. per annum, interest payable semi-annually, and delivered the same secured by a trust deed, which is duly recorded in the recorder's office of Cook county, Illinois, in Book 236, at page 153, to which reference is made, to the said Manufacturers' National Bank;

And whereas the said Manufacturers' National Bank afterwards and before said notes matured delivered them to the People's Bank of Belleville, and, for a valuable consideration, guaranteed the prompt payment of said notes and interest to said People's Bank;

And whereas the said Picket before said notes fell due became insolvent and the land mentioned in said trust deed was subject to heavy prior incumbrances which said People's Bank has removed:

It is agreed between the said People's Bank of Belleville and the said Manufacturers' National Bank that the guarantee of the
204 said Manufacturers' National Bank upon eight of said notes
shall be and remain binding upon said National Bank, and that any agreement which has been or may be made between the People's Bank and said Picket in regard to said Picket's liability as maker or endorser of said notes shall never be construed to release or in anywise affect said guarantee upon eight of said notes.

[SEAL.] In witness whereof the said Manufacturers' National Bank has caused its name to be hereto affixed by its president and its seal to be hereunto attached this 2d day of September, A. D. 1874.

MANUFACTURERS' NAT'L BANK,
By IRA HOLMES, *Pres't.*

Accepted.
PEOPLE'S BANK OF BELLEVILLE,
By C. W. THOMAS, *Att'y.*

205 "EXHIBIT B."

The Manufacturers' National Bank of Chicago hereby agrees that no release of a certain deed of trust executed by Henry E. Picket and wife on the 5th day of August, A. D. 1874, and duly recorded in the recorder's office of Cook county, Illinois, in Book 236, at page 153, shall operate to release said bank from its guarantee of eight of the notes in said deed named, to be selected and retained by the People's Bank of Belleville, the present legal holder of all of said notes in said deed named; and the said Manufacturers' National Bank further agrees that no release of the maker or endorser of said notes shall operate to relieve said National Bank of its liability upon said guarantee of eight of the same, the said Manufacturers' National Bank hereby continuing its guarantee of eight of said notes, notwithstanding any agreement which may be or may have been made between the holder of the same and the maker or endorser thereof, and notwithstanding any sale which may be made under said deed of trust.

In witness whereof the said Manufacturers' National Bank has caused its name to be signed hereto by its president and its [SEAL.] seal to be hereunto attached this second day of September, A. D. 1874.

MANUFACTURERS' NATIONAL BANK,
By IRA HOLMES, *Its President.*

(Here follows diagram marked p. 206.)

207 EXHIBIT 1.

(*Contract.*)

This agreement, made and entered into this 27th day of August, A. D. 1874, by and between Ira Holmes, of Chicago, Illinois, and the People's Bank of Belleville, of the same State, witnesseth:

That the said Holmes contracts and agrees with the said bank as follows: He will on the first day of September, A. D. 1874, execute and deliver to said bank his eighteen promissory notes of said date, each bearing interest at the rate of ten per cent. per annum from its date, interest payable semi-annually as follows: Nine of said notes to be for five thousand dollars each; two of said nine notes to be payable in one year from their date; four of said nine notes to be payable in two years from their date, and three of said nine notes to be payable in three years from their date, and eight of said eighteen notes to be for forty-seven hundred dollars each thereof, said eight notes to be payable in three years from their date, and five of said eight notes to be payable in four years from their date; and also one note for four thousand and eight hundred and sixty-five dollars and ten cents, to be payable in four years from its date, the total amount of which the said eighteen notes are to be 208 given, being eighty-seven thousand four hundred and sixty-five dollars and ten cents ($87,465.10).

And the said Holmes further contracts and agrees to execute and deliver to Charles W. Thomas, as trustees, simultaneously with the execution and delivery of said notes, his deeds of trust upon the east half of the southwest quarter of the northwest quarter of section ten (10), township thirty-seven (37) north, range fourteen (14) east, in Cook county, Illinois; the said deeds, each of them, to contain like covenants with a certain deed of trust executed by Henry E. Picket and wife to Joseph A. Holmes, as trustee, and recorded in the recorder's office of said county, in Book 236, at page 153. . The said deeds shall be given to secure the said eighteen notes severally and shall be eighteen in number, each deed to be given to secure one of said notes, and each of said deeds shall convey six and two-thirds (6⅔) acres of said land in the shape of a square or parallelogram.

And the said Holmes agrees and contracts to proceed with all possible dispatch to have the said lands surveyed and laid out into eighteen lots or blocks of six and two-thirds (6⅔) acres each, and to have the same duly platted, and each of the said deeds of
209 trust is to cover and convey one of the said lots or blocks so
to be platted.

And the said Holmes waives all laches of the holder of two certain promissory notes executed by Ray and Whitney on the ninth day of February, A. D. 1874, each for five thousand dollars, one payable four months and one payable six months after said date to the order of said Ray and Whitney and both bearing interest at the rate of ten per cent. after maturity, in not suing upon said notes within a reasonable time after the same became due, and said Holmes agrees and contracts to remain liable as endorser upon said notes, notwithstanding any failure of the holder thereof in the past or the future to sue upon the same, and he agrees never to plead or to allow any one for him to plead that suit was not brought against him as endorser of said notes within a reasonable time after the same became due.

And the said Holmes further contracts & agrees to make every effort to acquire the fee-simple title to the whole of said land.

And the said bank contracts and agrees on its part to foreclose at
once the deed of trust executed by Henry E. Picket and wife
210 to Joseph A. Holmes hereinabove mentioned, and to procure
the said Holmes as such trustee to sell the land in said deed of trust described under the provisions thereof at the expense of said Ira Holmes.

And the said bank further agrees to cause the said land to be bought in at said sale and conveyed to said Ira Holmes: Provided, however, that said Holmes shall have in all things complied with this contract: And further provided, that no one at the sale so to be made shall bid for the land in said deed of trust described as much as the encumbrances upon the same.

And whereas the International Bank, doing business in the city of Chicago, claims to have a prior and first lien upon a portion of said land to secure the payment of some amount, claimed to be between five thousand and ten thousand dollars, and whereas the said

People's Bank is not willing to allow the said claim and believes it to be unjust and unfounded, and that the said pretended prior lien has been fully discharged and paid, and whereas it is understood by the parties hereto that the said International Bank intends to endeavor to establish its said claim by suit, it is agreed
211 between the parties hereto that the said People's Bank may
take any steps it deems proper to defeat the said claim of the said International Bank, and whatever amount the said People's Bank necessarily expends in and about any proceedings which may be had to establish or defeat said claim and in and about the payment of the same, in case the said People's Bank should see fit or be compelled to pay the same, shall be deemed to be paid by said People's Bank at the special instance and request of said Ira Holmes and for his benefit, and he contracts and agrees to pay the same to said People's Bank within six months after it is paid by said People's Bank.

And it is understood and agreed between the parties hereto that one of the five-thousand-dollar notes first hereinbefore mentioned, payable in three years from its date and to be marked A in red ink on its face, is given by said Holmes to secure the said People's Bank to the extent of $5,000 against the payment of the said claim of the said International Bank; and in case the said People's Bank shall succeed in defeating the said claim, then the said note shall
212 be held by said People's Bank as security for the necessary
expenditures made and incurred by the said People's Bank in and about its defense against said claim and as security for the prompt payment of the notes of the said Holmes remaining unpaid at the time of the defeat of the said claim.

And the parties hereto do hereby severally solemnly estop themselves ever to plead, answer, or set up in any court or place that this contract was not made upon a good and valuable consideration moving from each to the other.

And it is further understood and agreed between the parties hereto that the notes mentioned in the encumbrances now existing upon said land shall stand as additional security for said People's Bank, as far as they go, for the indebtedness to be created by the said Holmes as hereinbefore mentioned.

And it is further understood and agreed between the parties hereto that two notes of Samuel J. Walker, each for $3,000, dated August 5th, 1873, both payable to the order of said Walker, one in one year after its date and one in fifteen months after its date; and also two notes of B. Philpot, one for $2,000 and one for
213 $2,091.41, the first dated August 15th, 1873, and payable
May 1st, 1874, to the order of said Philpot, and the other dated March 4th, 1874, and payable four months after its date to the order of said Philpot, shall stand as security, as far as they go, for the indebtedness to be created by the said Holmes as hereinbefore provided; and it is further understood and agreed by and between the parties hereto that any money which may be paid to the People's Bank upon any of the notes which are to stand as such additional security as aforesaid shall be by said bank credited

upon said eighteen notes of the said Holmes *pro rata*, the said credit or credits to be applied first to the interest and next to the principal of the notes remaining unpaid.

In witness whereof the said parties have hereunto interchangeably set their names this 27th day of August, A. D. 1874.

(Signed) IRA HOLMES.
(Signed) THE PEOPLE'S BANK OF BELLEVILLE,
By C. W. THOMAS, *Att'y.*

(Endorsed:) Copy of contract between Ira Holmes and the People's Bank of Belleville, made August 27th, 1874. State of Illinois, Cook county, *ss.* No. 180,948. Recorded May 17, 1878, at 10 o'clock a. m., Book 827 of Records, page 159. Jas. W. Brockway, recorder.

214 "EXHIBIT 2."

(*Deed.*)

This indenture, made this fifth day of August, in the year of our Lord one thousand eight hundred and seventy-three, between Henry E. Picket and Evaline H. Picket, of the county of Cook and State of Illinois, party of the first part, and Joseph A. Holmes, of the same place, party of the second part, witnesseth:

Whereas the said Henry E. Picket, party of the first part, has executed his ten (10) certain promissory notes of even date herewith, the same being for part purchase-money for the lands and premises herein described, and being made payable to the order of himself for the sum of five thousand (5,000) dollars each, respectively, due and payable in one (1) year from date at the Manufacturers' National Bank in Chicago, with interest at the rate of ten per cent. per annum:

Now, therefore, the said party of the first part, in consideration of the premises and in the further consideration of one dollar to them in hand paid by said second party, the receipt whereof is hereby acknowledged, have — and hereby does grant, bargain, sell, and convey unto said party of the second part, his heirs, assigns, or successors in trust, forever, all the premises situate in county of Cook and State of Illinois, and known and described as follows, to wit: 215

The undivided one-half, ½, of the northwest quarter (¼) of section ten (10), township thirty-seven (37) north, range fourteen (14) east, of the third principal meridian, in the county of Cook, State of Illinois; the west five (5) acres of the south half (S. ½) of lot fifteen (15), in Davlin's subdivision of the northwest quarter (N. W. ¼) of section twenty-six (26), town. forty (40) north, of range thirteen (13) east, of the third (3rd) principal meridian, in the county of Cook, State of Illinois; lots twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), thirty-four (34), thirty-five (35), and forty-eight (48), in block two

(2), lots five (5), sixteen (16), seventeen (17), eighteen (18), and nineteen (19), in block four (4), and lots thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six (46), forty-seven (47), and forty-eight (48), in block five (5), in Pierce's Addition to Holstein, in the city of Chicago, county of Cook and State of Illinois:

216 To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, unto the said party of the second part, his heirs, assigns, or successors in trust, hereinafter named forever.

In trust, nevertheless, to wit, in trust that in case of default in the payment of the said promissory notes or any or either of them or any part thereof, or in case of a breach of any of the covenants or stipulations herein contained, then, on the application of the legal holder of said promissory notes or any or either of them, it shall and may be lawful for the said party of the second part, his heirs, assigns, or successors in trust, with or without entry, into and upon all and singular the premises hereby granted or any part thereof, in the name of the said second party, to receive all rents, issues, and profits thereof, and either with or without entering into or upon said premises to sell and dispose of the same, and all the right, title, benefit, and equity of redemption of said party of the first part, their heirs or assigns, herein, at public action in the city of Chicago, at the northeast corner of Court-House square, in the county of Cook,
217 in the State of Illinois, for the highest and best price the same
shall bring in cash, twenty (20) consecutive legal days public notice having been previously given of the time and place of such sale by advertisement in any of the newspapers at that time published in said city of Chicago, and to adjourn such sale from time to time and for such time as may be thought expedient, and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale, after first paying all costs of advertising and sale, commissions, and all other expenses of this trust, including all moneys advanced for taxes or other liens or assessments, with the interest thereon, to pay the principal and interest then unpaid, whether due or not, on said promissory notes or any or either of them, according to the tenor and effect thereof, or to the said the legal holder thereof in case they shall have paid the same, rendering the overplus (if any) unto the said party of the first part, their legal representatives or assigns, on reasonable request, and it
218 shall not be obligatory upon the purchaser or purchasers at
any such sale to see to the application of the purchase-money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, their heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part or any — them.

And the said Henry E. Picket and Evaline H. Picket, his wife, for themselves, their heirs, executors, and administrators, covenant and agree to and with said party of the second part, his legal representatives or successors in trust, that at the time of the encealing and delivery of these presents they are well seized of said premises and have good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and encumbrances whatsoever (unless as herein specified), and until said indebtedness is fully paid or said premises are sold by virtue hereof they will pay all taxes and assessments thereon when and as the same become due and payable.

219 And it is stipulated and agreed that in case of default in any of said payments of principal or interest as aforesaid, of a breach in any of the covenants or agreements herein, then and in that case the whole of said principal sum hereby secured and the interest to the time of sale, according to the tenor and effect of said indebtedness, may at once, at the option of the legal holder thereof, become due and payable, and the said premises be sold in like manner and with the same effect as if the said indebtedness had matured.

And, further, that in the case of the death, resignation, removal from the said trust, or other inability to act of said party of the second part, then Milford D. Buchanan, of the said city of Chicago, shall be and is hereby appointed and made the successor in trust herein, with like power and authority as the said party of the second part hereby has, in and about the management of the said trust estate, and the said premises shall become vested in such new trustee accordingly.

220 And the said Henry E. Picket and Evaline H. Picket, his wife, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under and by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise and expressly under the act entitled "An act to exempt homesteads from sale on execution," passed by the General Assembly of the State of Illinois A. D. 1851 and approved February 11, A. D. 1851, and an act entitled "An act to amend an act to exempt homesteads from sale on execution," passed by said Assembly A. D. 1857 and approved February 17th, 1857.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

HENRY E. PICKET. [SEAL.]
EVALINE H. PICKET. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

STATE OF ILLINOIS, }
Cook County, } *ss*:

I, William E. Swentzel, a notary public in and for said county and a resident of said city, in said county, in the State aforesaid,
221 do hereby certify that Henry E. Pickett and Evaline H. Picket, his wife, who are personally known to me as the persons

whose name- are subscribed to the within trust deed as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said trust deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws so called.

And the said Evaline H. Picket, wife of the said Henry E. Picket, having been by me examined separate and apart and out of the hearing of her said husband and the contents and meaning of the said trust deed having been by me made known and fully explained to her, together with all her rights and privileges under the homestead exemption laws, so called, of the State of Illinois, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, and interest to the lands 222 and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called, without the compulsion of her said husband, and that she does not wish to retract the same.

[SEAL.] Given under my hand and notarial seal this sixth day of August, in the year of our Lord one thousand eight hundred and seventy-three.

WM. E. SWENTZEL,
Notary Public.

[Endorsed :] No. 118,989. Filed for record Aug. 6th, 1873. Recorded Aug. 13th, 1873. James Stewart, recorder.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Wiley S. Scribner, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the sixth day of August, A. D. 1873, as document No. 118,989, and recorded in Book 236 of Records, at page 153.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this twentieth day of July, A. D. 1887.

WILEY S. SCRIBNER, *Recorder.*

(Endorsed :) Filed June 16, 1888. Wm. H. Bradley, clerk.

223 *Files in Case of People's National Bank of Belleville vs. Manufacturers' National Bank.*

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court. March Term, A. D. 1877.

PEOPLE'S BANK OF BELLEVILLE
vs.
MANUFACTURERS' NATIONAL BANK. } In Assumpsit.

I enter myself as security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the defendant of any costs ordered or adjudged to be paid by it I hereby agree and stipulate that execution may issue against my property for any costs taxed against it.

Dated this 22d day of February, A. D. 1877.

GEO. GARDNER.

(Endorsed:) Filed Feb. 22, A. D. 1877. Wm. H. Bradley, clerk.

224 UNITED STATES OF AMERICA,
State of Illinois, County of Cook, } *ss:*

Pleas before the Honorable Joseph E. Gary, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, on the 2d day of January, A. D. 1877, at a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the first day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first.

Present: The Honorable Joseph E. Gary, judge of the superior court of Cook county; Luther Laflin Mills, prosecuting attorney; Charles Kern, sheriff of Cook county.

Attest: JOHN J. HEALY, *Clerk.*

Be it remembered that heretofore, to wit, on the twentieth day of October, in the year of our Lord one thousand eight hundred and seventy-six, The People's Bank of Belleville, plaintiff, by George W. Smith and C. W. Thomas, its, attorneys, filed in the office of the clerk of the superior court of Cook county its præcipe for summons and its declaration, which are in the words and figures as follows, to wit:

Præcipe for Summons.

STATE OF ILLINOIS, }
Cook County, } *ss:*

Superior Court of Cook County, to the November Term, A. D. 1876.

PEOPLE'S BANK OF BELLEVILLE, Plaintiff, }
vs. } Assumpsit.
MANUFACTURERS' NATIONAL BANK OF } Damages, $800,00.00.
CHICAGO, Defendant. }

225 The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case on promises to the damage of said plaintiff in the sum of eighty thousand dollars, direct the same to the sheriff of Cook county to execute, and make it returnable to the November term of said court, A. D. 1876.

GEO. W. SMITH,
Plaintiff's Attorney.

To John J. Healy, Esq., clerk.
Chicago, October 20th, 1876.

Declaration.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

In the Superior Court of Cook County, to the November Term, 1876.

The People's Bank of Belleville, plaintiff, complains of The Manufacturers' National Bank of Chicago, defendant, of a plea of trespass on the case on promises—

For that whereas, on the 5th day of August, A. D. 1873, at Chicago, to wit, at the county of Cook, in the State of Illinois, one Henry E. Picket made his promissory note in writing, bearing date the day and year aforesaid, by him subscribed, and thereby promised to pay, for value received, to his own order, one year after said date, five thousand dollars at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with interest at 10 per cent. per annum after maturity, and endorsed the same by writing his name upon the back thereof; and whereas, on the same day and year aforesaid, and before plaintiff received said note as hereinafter mentioned, and before said note was put in circulation by said Pickett, the defendant, 226 at the county aforesaid, in consideration that the plaintiff would accept and receive of the said Picket the said note by its endorsement in writing on the back of said note, signed by it, the defendant, by the name and style of M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago, guaranteed the payment of the said sum of money, with interest, at the maturity of the said note and promised the plaintiff to pay it the same, with interest, as specified in said note, according to the tenor and effect thereof, if the said Picket should not so pay the same; and the plaintiff avers that thereupon it, confiding in the said undertaking of the defendant, then and there accepted and received of the said Picket the note aforesaid, and that, although the day of payment in the said note specified has elapsed, the said Picket did not nor would on that day or at any other time pay to the plaintiff the amount of the said note or interest, or any part thereof, but refuses so to do; whereof the defendant, on the day last aforesaid, had notice.

And whereas, also, one Henry E. Picket, on the 5th day of August, A. D. 1873, at Chicago, to wit, at the county of Cook, in the State of Illinois, made his other promissory note in writing, bearing date the day and year aforesaid, by him subscribed, and thereby promised to pay, for value received, to his own order, one year after said date, five thousand dollars at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with interest at ten per cent. per annum after maturity, and endorsed the same by writing his name upon the back thereof; and whereas, on the day and year aforesaid, and before plaintiff received said note as hereinafter mentioned, 227 and before said note was put in circulation by said Picket, the defendant, at the county aforesaid, in consideration that the plaintiff would accept and receive of the said Picket the said note by its endorsement in writing on the back of said note signed by it, the defendant, by the name and style of M. D. Buchanan, vice-pres't Man'f. Nat'l Bank of Chicago, guaranteed the payment of the said sum of money, with interest, at the maturity of the said note and promised the plaintiff to pay it the same, with interest, as specified in said note, and according to the tenor and effect thereof, if the said Picket should not so pay the same.

And the plaintiff avers that thereupon it, confiding in the undertaking of the defendant, then and there accepted and received of the said Picket the note aforesaid, and that although the day of payment in the said note specified has elapsed, the said Picket did not nor would on that day or at any other time pay to the plaintiff the amount of the said note or interest or any part thereof, but refuses so to do; whereof the defendant on the day last aforesaid had notice.

And whereas also one Henry E. Picket, on the 5th day of August, A. D. 1873, at Chicago, to wit, at the county of Cook, in the State of Illinois, made his other promissory note in writing, bearing date the day and year aforesaid, by him subscribed, and thereby promised to pay, for value received, at his own order, one year after said date, five thousand dollars, at the Manufacturers' Nat. Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with interest at ten per cent. per annum after maturity, 228 and endorsed the same by writing his name upon the back thereof; and whereas, on the day and year aforesaid and before plaintiff received said note as hereinafter mentioned and before said note was put in circulation by said Picket, the defendant, at the county aforesaid, in consideration that the plaintiff would accept and receive of the said Picket the said note, by its endorsement in writing on the back of said note, signed by it, the defendant, by the name and style of M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago, guaranteed the payment of the said sum of money, with interest, at the maturity of the said note, and promised the plaintiff to pay it the same, with interest, as specified in said note and according to the tenor and effect thereof, if the said Picket should not so pay the same.

And the plaintiff avers that thereupon it, confiding in the said undertaking of the defendant, then and there accepted and received of the said Picket the note aforesaid, and that, although the day of payment in the said note specified has elapsed, the said Picket did not nor would on that day or at any other time pay to the plaintiff the amount of the said note or interest or any part thereof, but refuses so to do; whereof the defendant on the day last aforesaid had notice.

And whereas also the said Henry E. Picket, on the 5th day of August, A. D. 1873, at Chicago, to wit, at the county of Cook, in the State of Illinois, made his other promissory note in writing, bearing date the day and year aforesaid, by him subscribed, and thereby promised to pay, for value received, to his own order, one year
229 after said date, five thousand dollars, at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with interest at ten per cent. per annum after maturity, and endorsed the same by writing his name upon the back thereof.

And whereas, on the day and year aforesaid and before plaintiff received said note as hereinafter mentioned and before said note was put in circulation by said Picket, the defendant, at the county aforesaid, in consideration that the plaintiff would accept and receive of the said Picket the said note by its endorsement in writing on the back of said note, signed by it, the defendant, by the name and style of M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago, guaranteed the payment of the said sum of money, with interest, at the maturity of the said note, and promised the plaintiff to pay it the same, with interest, as specified in said note and according to the tenor and effect thereof, if the said Picket should not so pay the same; and the plaintiff avers that thereupon it, confiding in the said undertaking of the defendant, then and there accepted and received of the said Picket the note aforesaid, and that, although the day of payment in the said note specified has elapsed, the said Picket did not nor would on that day or at any other time pay to the plaintiff the amount of the said note or interest or any part thereof, but refuses so to do, whereof the defendant on the day last aforesaid had notice.

And whereas also the said Henry E. Picket, on the 5th day of August, A. D. 1873, at Chicago, to wit, at the county of Cook, in the State of Illinois, made his other promissory note in writing, bearing

date the day and year aforesaid, by him subscribed, and
230 thereby promised to pay, for value received, to his own order,
one year after said date, five thousand dollars at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with interest at ten per cent. per annum after maturity, and endorsed the same by writing his name upon the back thereof.

And whereas, on the day and year aforesaid and before plaintiff received said note, as hereinafter mentioned, and before said note was put in circulation by said Picket, the defendant, at the county aforesaid, in consideration that the plaintiff would accept and receive of the said Picket the said note by its endorsement in writing on the back of said note, signed by it, the defendant, by the name and style of M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago, guaranteed the payment of the said sum of money, with interest, at the maturity of the said note, and promised the plaintiff to pay it the same, with interest, as specified in said note and according to the tenor and effect thereof, if the said Picket should not so pay the same; and the plaintiff avers that thereupon it, confiding in the said undertaking of the defendant, then and there accepted and received of the said Picket the note aforesaid, and that, although the day of payment in the said note specified has elapsed, the said Picket did not nor would on that day or at any other time pay to the plaintiff the amount of the said note or interest or any part thereof, but refuses so to do, whereof the defendant on the day last aforesaid had notice.

And whereas also the said Henry E. Picket, on the 5th day of August, A. D. 1873, at Chicago, to wit, at the county of Cook, in the
State of Illinois, made his other promissory note in writing,
231 bearing date the day and year aforesaid, by him subscribed,
and thereby promised to pay, for value received, to his own order, one year after said date, five thousand dollars at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with interest at ten per cent. per annum after maturity, and endorsed the same by writing his name upon the back thereof.

And whereas, on the day and year aforesaid and before plaintiff received said note, as hereinafter mentioned, and before said note was put in circulation by said Picket, the defendant, at the county aforesaid, in consideration that the plaintiff would accept and receive of the said Picket the said note by its endorsement in writing on the back of said note, signed by it, the defendant, by the name and style of M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago, guaranteed the payment of the said sum of money, with interest, at the maturity of the said note, and promised the plaintiff to pay it the same, with interest, as specified in said note and according to the tenor and effect thereof, if the said Picket should not so pay the same; and the plaintiff avers that thereupon it, confiding in the said undertaking of the defendant, then and there accepted and received of the said Picket the note aforesaid, and, although the day of payment in the said note specified has elapsed, the said Picket did not nor would on that day or at any other time pay to the plaintiff the amount of the said note or interest or any part thereof, but refuses so to do, whereof the defendant on the day last aforesaid had notice.

And whereas also the said Henry E. Picket, on the 5th day of August, A. D. 1873, at Chicago, to wit, at the county of Cook, in the State of Illinois, made his other promissory note in writing, bearing
232 date the day and year aforesaid, by him subscribed, and thereby promised to pay, for value received, to his own order, one year after said date, five thousand dollars, at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with interest at ten per cent. per annum after maturity, and endorsed the same by writing his name on the back thereof; and whereas, on the day and year aforesaid and before plaintiff received said note as hereinafter mentioned and before said note was put in circulation by said Picket, the defendant, at the county aforesaid, in consideration that the plaintiff would accept and receive of the said Picket the said note by its endorsement in writing on the back of said note, signed by it, the defendant, by the name and style of M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago, guaranteed the payment of the said sum of money, with interest, at the maturity of the said note, and promised the plaintiff to pay it the same, with interest, as specified in said note, according to the tenor and effect thereof, if the said Picket should not so pay the same; and the plaintiff avers that thereupon it, confiding in the said undertaking of the defendant, then and there accepted and received of the said Picket the note aforesaid, and, although the day of payment in the said note specified has elapsed, the said Picket did not nor would on that day or at any other time pay to the plaintiff the amount of the said note or interest or any part thereof, but refuses so to do, whereof the defendant on the day last aforesaid had notice.

And whereas also the said Henry E. Picket, on the 5th day of August, A. D. 1873, at Chicago, to wit, at the county of Cook, in the State of Illinois, made his other promissory note in writing, bear-
233 & 234 ing date the day and year aforesaid, by him subscribed, and thereby promised to pay, for value received, to his own order, one year after said date, five thousand dollars at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with interest at ten per cent. per annum after maturity, and endorsed the same by writing his name upon the back thereof; and whereas, on the day and year aforesaid and before plaintiff received said note, as hereinafter mentioned, and before said note was put in circulation by said Picket, the defendant, at the county aforesaid, in consideration that the plaintiff would accept and receive of the said Picket the said note by its endorsement in writing on the back of said note, signed by it, the defendant, by the name and style of M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago, guaranteed the payment of the said sum of money, with interest, at the maturity of the said note, and promised the plaintiff to pay it the same, with interest, as specified in said

note, and according to the tenor and effect thereof, if the said Picket should not so pay the same; and the plaintiff avers that thereupon it, confiding in the said undertaking of the defendant, then and there accepted and received of the said Picket the note aforesaid, and, although the day of payment in the said note specified has elapsed, the said Picket did not nor would on that day or at any other time pay to the plaintiff the amount of the said note or interest or any part thereof, but refuses so to do, whereof the defendant, on the day last aforesaid, had notice.

And whereas also the said Henry E. Picket, on the 5th day
235 of August, A. D. 1873, at Chicago, to wit, at the county of
Cook and State of Illinois, made his eight other promissory notes, in writing, each bearing date the day and year aforesaid, by each of which said notes the said Picket promised to pay to his own order the sum of five thousand dollars at the Manufacturers' National Bank of Chicago, to wit, at the county aforesaid, with interest thereon from said date until maturity at the rate of ten per cent. per annum, payable semi-annually, and with interest from maturity at the rate of ten per cent. per annum; and plaintiff avers that the said Picket, on the day and year aforesaid, in order to make said notes negotiable, endorsed each of the same on the back with his name and delivered all of said notes to the defendant to negotiate and for no other consideration and purpose whatever, and that the defendant, in consideration that the plaintiff would accept and receive said notes of the said Picket, guaranteed, in writing, the prompt payment by said Picket of the principal sum and interest of said notes at their maturity, and promised plaintiff to pay it the said sums of money in said notes severally mentioned, with interest, according to the tenor and effect of said notes, severally, if the said Picket should not so pay the same; and plaintiff avers that it, confiding in the said undertaking of said defendant, accepted and received the said notes of the said Picket, and that, although the day of payment in the said notes specified has elapsed, the said Picket did not nor would on that day or at any other time pay to the plaintiff the amount of said notes, with interest, or the amount of
any of the said notes, with interest, or any part thereof, but
236 refuses so to do, whereof the defendant, on the day last afore-
said, had notice.

And whereas also the said Henry E. Picket, on the 5th day of August, A. D. 1873, at Chicago, to wit, at the county of Cook and State of Illinois, made his eight other promissory notes in writing, each bearing date the day and year aforesaid, by each of which said notes the said Picket promised to pay to his own order, for value received, the sum of five thousand dollars at the Manufacturers' National Bank of Chicago, to wit, at the county aforesaid, with interest thereon until maturity at the rate of ten per cent. per annum, payable semi-annually, and with interest after maturity at the rate of ten per cent. per annum.

And plaintiff avers that the said Picket, on the day and year aforesaid, endorsed each of said notes on the back with these words, to wit, "Pay to the order of the People's Bank of Belleville," and signed the said endorsement with his name and delivered said notes to the defendant, and that the defendant, in consideration that the plaintiff would accept and receive said notes of the said Picket, guaranteed in writing the prompt payment by said Picket of the principal sum and interest of said notes at their maturity and promised plaintiff to pay it the said sums of money in said notes severally mentioned, with interest, according to the tenor and effect of said notes severally, if the said Picket should not so pay the same; and plaintiff avers that it, confiding in the said undertaking of said defendant, accepted and received the said notes of the said Picket, and that, although the day of payment in the said notes specified has elapsed, the said Picket did not nor would on that day or at any 237 other time pay to the plaintiff the amount of said notes, with interest, or the amount of any of the said notes, with interest, or any part thereof, but refuses so to do, whereof the defendant, on the day last aforesaid, had notice, by means whereof the defendant then and there became liable to pay to the said plaintiff the said several sums of money in the several counts above mentioned when it, the said defendant, should be thereunto afterwards requested, and, being so liable, it, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook and then and there promised the said plaintiff to pay it the said sums of money when it, the said defendant, should be thereunto afterwards requested, and yet the defendant, although requested, has not paid the plaintiff the said several sums of money or any of them or any part thereof, to the damage of plaintiff of eighty thousand dollars; wherefore it brings suit, &c.

GEO. W. SMITH &
C. W. THOMAS,
Pl't'ff's Attorneys.

238 *Copies of Instruments Sued on.*

$5,000.00. CHICAGO, *August 5th*, 1873.

One year after date I promise to pay to the order of myself five thousand dollars, at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with ten per cent. per annum interest after maturity, value received.

HENRY E. PICKET.

Due ——, —.

This note is secured by trust deed endorsed as follows:

"Pay to the order of the People's Bank of Belleville. Henry E. Picket. This bank hereby guarantees the payment of this note, principal and interest, at maturity. M. D. Buchanan, vice-pres't Man'f. Nat'l Bank of Chicago."

[On margin:] Henry E. Picket, broker & real-estate dealer.

$5,000.00. CHICAGO, *August 5th*, 1873.

One year after date I promise to pay to the order of myself five thousand dollars, at the Manufacturer's National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with ten per cent. per annum interest after maturity, value received.

HENRY E. PICKET.

Due ——, —.

This note is secured by trust deed endorsed as follows:

"Pay to the order of the People's Bank of Belleville. Henry E. Picket. This bank hereby guarantees the payment of this note, principal and interest, at maturity. M. D. Buchanan, vice-pres't Man'f. Nat'l Bank of Chicago."

[On margin:] Henry E. Picket, broker & real-estate dealer.

$5,000.00. CHICAGO, *August 5th*, 1873.

One year after date I promise to pay to the order of myself five thousand dollars, at the Manufacturers' Nat. Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with ten per cent. per annum after maturity, value received.

HENRY E. PICKET.

Due ——, —.

This note is secured by trust deed endorsed as follows:

"Pay to the order of the People's Bank of Belleville. Henry E. Picket. This bank hereby guarantees the payment of this note, principal and interest, at maturity. M. D. Buchanan, vice-pres't Man'f. Nat'l Bank of Chicago."

[On margin:] Henry E. Picket, broker & real-estate dealer.

$5,000.00. CHICAGO, *August 5th*, 1873.

One year after date I promise to pay to the order of myself five thousand dollars, at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with ten per cent. per annum interest after maturity, value received.

HENRY E. PICKET.

Due ——, —.

This note is secured by trust deed endorsed as follows:

"Pay to the order of the People's Bank of Belleville. Henry E. Picket. This bank hereby guarantees the payment of this note, principal and interest, at maturity. M. D. Buchanan, vice-pres't Man'f.s' Nat'l Bank of Chicago."

[On margin:] Henry E. Picket, broker & real-estate dealer.

239 $5,000.00. Chicago, *August 5th*, 1873.

One year after date I promise to pay to the order of myself five thousand dollars, at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with ten per cent. per annum interest after maturity, value received.

HENRY E. PICKET.

Due ——, —.

This note — secured by trust deed, endorsed as follows:

"Pay to the order of the People's Bank of Belleville. Henry E. Picket. This bank hereby guarantees the payment of this note, principal and interest, at maturity. M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago."

[On margin:] Henry E. Picket, broker & real-estate dealer.

$5,000.00. Chicago, *Aug. 5th*, 1873.

One year after date I promise to pay to the order of myself five thousand dollars, at the Manufacturers' Nat. B'k of Chicago, with interest at 10 per cent. per annum, payable semi-annually, and with ten per cent. per annum — after maturity, value received.

HENRY E. PICKET.

Due ——, —.

This note is secured by trust deed, endorsed as follows:

"Pay to the order of the People's Bank of Belleville. Henry E. Picket. This bank hereby guarantees the payment of this note, principal and interest, at maturity. M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago."

[On margin:] Henry E. Picket, broker & real-estate dealer.

$5,000.00. Chicago, *August 5th*, 1873.

One year after date I promise to pay to the order of myself five thousand dollars, at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with ten per cent. per annum interest after maturity, value received.

HENRY E. PICKET.

Due ——, —.

This note is secured by trust deed, endorsed as follows:

"Pay to the order of the People's Bank of Believille. Henry E. Picket. This bank hereby guarantees the payment of this note, principal and interest, at maturity. M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago."

[On margin:] Henry E. Picket, broker & real-estate dealer.

$5,000.00. CHICAGO, *August 5th*, 1873.

One year after date I promise to pay to the order of myself five thousand dollars, at the Manufacturers' National Bank of Chicago, with interest at ten per cent. per annum, payable semi-annually, and with ten per cent. per annum interest after maturity, value received.

HENRY E. PICKET.

Due ——, —.

This note is secured by trust deed, endorsed as follows:

"Pay to the order of the People's Bank of Belleville. Henry E. Picket. This bank hereby guarantees the payment of this note, principal and interest, at maturity. M. D. Buchanan, vice-pres't Man'f's' Nat'l Bank of Chicago."

[On margin:] Henry E. Picket, broker & real-estate dealer.

240 CHICAGO, *Aug. 8th*, 1873.

A. G. Badgley, Esq., cashier:

In accordance with your telegram of this date, I herewith hand you ten notes of $5,000 each, Henry E. Picket, dated 5th August, 1873, ten per cent., semi-annually—$50,000. We debit your account $50,000. This bank hereby guarantees the prompt payment of the principal sum and interest at maturity of said notes. The trust deed securing said notes has been filed for record, and as soon as recorded I will forward same to you. Please return to me note of Sherman, $15,000, enclosed in our letter of 6th inst., and we will credit same on your account.

M. D. BUCHANAN, *Vice-Pres't.*

STATE OF ILLINOIS, } *ss:*
Cook County, }

In the Superior Court of Cook County, to the November Term, 1876.

THE PEOPLE'S BANK OF BELLEVILLE
vs. } Assumpsit.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO.

STATE OF ILLINOIS, } *ss:*
St. Clair County, }

Albert G. Badgley, being first duly sworn, says upon his oath that he is and for more than three years last past has been cashier of the plaintiff; that the demand of the plaintiff in the above-entitled cause is upon and on account of defendant's written guaranty of eight promissory notes, all executed by one Henry E. Picket, all dated Chicago, August 5th, 1873, all payable one year after said date to the order of said Picket, and all endorsed by him, all bearing interest at ten per cent. per annum, payable semi-annually, and interest at a like rate after maturity, all payable at the Manu-

facturers' National Bank of Chicago, and each for the sum of five thousand dollars, a copy of which notes and guaranty are
241 filed with the declaration in said cause, and that there is due said plaintiff from the defendant, after allowing to it, the defendant, all just credits, deductions, and set-offs, the sum of forty thousand dollars, with interest thereon at the rate of ten per cent. per annum from the 5th day of August, A. D. 1873.

ALBERT G. BADGLEY.

Subscribed and sworn to before me this ninth day of October, A. D. 1876.

[NOTARIAL SEAL.] CHARLES W. THOMAS,
Notary Public.

And on the day and year last aforesaid, to wit, October 20th, A. D. 1876, there issued out of the office of the clerk of said court the people's writ of summons; which said writ, with the returns of the sheriff thereon endorsed, is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Manufacturers' National Bank of Chicago, if it shall be found in your county, personally to be and appear before the superior court of Cook county on the first day of the term thereof, to be holden at the court-house in Chicago, in said Cook county, on the first Monday of November next, to answer unto the People's Bank of Belleville in a plea of trespass on the case upon promises, to damage of said plaintiff, as it is said, in the sum of eighty thousand dollars.

And have you then and there this writ, with an endorse-
242 ment thereon in what manner you shall have executed the same.

Witness John J. Healy, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 20th day of October, A. D. 1876.

JNO. J. HEALY, *Clerk.* [SEAL.]

Endorsed: Served the within writ on the within-named Manufacturers' National Bank of Chicago by delivering a copy thereof to Ira Holmes, president of said bank, this 20th day of October, 1876. Francis Agnew, sheriff, by William Hogarty, deputy. 1.00, paid.

And afterwards, to wit, on the sixth day of November, in the year last aforesaid, to wit, A. D. 1876, the Manufacturers' National Bank, defendant, by Gardner & Schuyler, its attorneys, filed in the office of the clerk of said court its plea and affidavit of merits, which are in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of said County, of the November Term, 1876.

MANUFACTURERS' NATIONAL BANK }
ats. } Assumpsit.
PEOPLE'S BANK OF BELLEVILLE. }

And the said defendant, by Gardner and Schuyler, its attorneys, comes and defends the wrong and injury when, &c., and says that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it; and of this it puts itself upon the country, &c.

And, for a further plea in this behalf, the said defendant comes and defends the wrong and injury when, &c., and says that the said several supposed guaranties in the said declaration mentioned
243 are not nor ever were the guaranties of the said defendant; and of this it puts itself upon the country, &c.

GARDNER & SCHUYLER,
Def't's Att'ys.

STATE OF ILLINOIS, } ss:
Cook County, }

Joel D. Harvey, being duly sworn, deposes and says that on the 26th day of February, 1875, by the order and decree of the United States circuit court of the northern district of Illinois, he was duly appointed receiver of The Manufacturers' National Bank, the defendant named in the above-entitled suit, and that he is still acting as such receiver; that he has read the foregoing pleas and knows the contents thereof, and that the same are true in substance and in fact.

JOEL D. HARVEY.

Subscribed and sworn to before me this — day of November, 1876.

O. R. GLOVER, [NOTARIAL SEAL.]
Notary Public.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of said County.

PEOPLE'S BANK OF BELLEVILLE }
vs. } Assumpsit.
MANUFACTURERS' NATIONAL BANK. }

Joel D. Harvey, being duly sworn, upon oath says that he is the receiver duly appointed by the circuit court of the United States for the northern district of Illinois of the above-named defendant, and that he verily believes the said defendant has a good defense to said suit upon the merits to the whole of the said plaintiff's demand.

JOEL D. HARVEY.

244 Subscribed and sworn to before me this — day of November, 1876.

O. R. GLOVER, [NOTARIAL SEAL.]
Notary Public.

And afterwards, to wit, on the thirty-first day of January, in the year of our Lord one thousand eight hundred and seventy-seven, the defendant, by its attorneys aforesaid, filed in the office of the clerk of said court its petition, affidavit, and bond to remove said cause to the circuit court of the United States for the northern district of Illinois, which are in the words and figures as follows, to wit:

Petition.

STATE OF ILLINOIS, *Cook County,* } *ss :*

In the Superior Court of said County, of the January Term, 1877.

PEOPLE'S BANK OF BELLEVILLE *vs.* MANUFACTURERS' NATIONAL BANK. } Assumpsit.

To the honorable the judges of the superior court of Cook county, Illinois:

The petition of Joel D. Harvey respectfully shows—

That he is informed and believes that the above-named plaintiff is a corporation duly organized under and by virtue of the laws of the State of Illinois and brings the above-entitled suit as such corporation.

Your petitioner further shows that the above-named defendant is a corporation duly organized at Chicago, in said county, under and by virtue of title 52 of the laws of the United States of America and the amendments thereto, the said title 52 being an act
245 of Congress of said United States to provide for the creation and organization of national banks and specifying the powers of corporations organized thereunder.

And your petitioner further shows that on or about the 26th day of February, 1875, in a certain action therefor pending in the circuit court of the United States for the northern district of Illinois, wherein James Irons was complainant and the said Manufacturers' National Bank & others were defendants, your petitioner was, by an order of said court duly entered in said cause, duly appointed receiver of said Manufacturers' National Bank; that immediately thereupon your petitioner duly qualified as such receiver and entered upon the performance of his duties and has ever since continued to act as such receiver.

And your petitioner further shows that the suit hereinabove entitled was commenced in this court on the 20th day of October, 1876, and that on the 6th day of November, 1876, your petitioner filed pleas in bar in said cause in behalf of the said defendant.

Petitioner also represents and shows that the said suit is brought upon the alleged guaranties of said bank of eight notes of $5,000 each, now alleged to be owned by said plaintiffs, and that your petitioner for one ground of defense to said suit has pleaded in said suit and claims the fact to be that the alleged guaranties sued upon were not and are not the guaranties of the said Manufacturers' National Bank; and your petitioner further shows that the said suit is one arising under the laws of the United States, and that the gist 246 of the action depends upon the construction of the said act under which the said defendant was organized as aforesaid, and that the amount involved in said cause exceeds the sum of forty thousand dollars.

And your petitioner further shows that the said suit has never been placed upon the trial docket of this court, and that said suit could not have been and cannot now be tried before the next term of this court.

Wherefore your petitioner prays that, in pursuance of the laws of the United States in such case provided, the said suit may be removed into the circuit court of the United States for the northern district of Illinois, and that an order of court be entered herein to that effect.

And your petitioner presents now here his bond in the penal sum of five thousand dollars, with Daniel J. Schuyler as his surety, conditioned that your petitioner will enter in said United States circuit court, on or before the first day of the next term thereof, a copy of the record in this suit and pay all costs that may be awarded by said circuit court if such court shall hold that the said suit was improperly removed thereto or wrongfully removed thereto, and also that he will there appear and enter special bail in said suit if special bail was original- requisite therein; which said bond your petitioner prays may be approved by the court; and your petitioner will ever pray, &c.

JOEL D. HARVEY, *Receiver.*

GARDNER & SCHUYLER, *Att'ys for Pet'r.*

247 *Affidavit.*

STATE OF ILLINOIS, } *ss:*
Cook County, }

Joel D. Harvey, being duly sworn, deposes and says that he is the petitioner named in and who signed the foregoing petition; that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be upon information and belief, and as to those matters he believes them to be true.

JOEL D. HARVEY.

Subscribed and sworn to before me this 30th day of January, 1877.

JOHN A. HINCKLEY, [NOTARIAL SEAL.]
Notary Public.

Bond.

Know all men by these presents that we, Joel D. Harvey, receiver of the Manufacturers' National Bank, and Daniel J. Schuyler are held and firmly bound unto the People's Bank of Belleville in the penal sum of five thousand dollars; for the payment of which sum, well and truly to be made unto the said People's Bank of Belleville, its successors or assigns, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty-seventh day of January, 1877.

The condition of this obligation is such that whereas the said obligor, Joel D. Harvey, as receiver of said Manufacturers' National Bank, has filed a petition in a certain cause now pending — 248 undetermined in the superior court of Cook county, Illinois, wherein said above-named obligee is plaintiff and said Manufacturers' National Bank is defendant, praying for the removal of said cause to the circuit court of the United States for the northern district of Illinois:

Now, therefore, if after the granting of such order of removal of said suit to the said circuit court of the United States for the northern district of Illinois, in pursuance of the prayer of said petition, the said Joel D. Harvey shall enter in said circuit court, on or before the first day of the next succeeding term thereof, a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court if said court shall hold that said cause was improperly removed thereto, and shall also appear in said circuit court and enter special bail in said suit if special bail was originally requisite therein, then this obligation shall be void; else to remain in full force and virtue.

JOEL D. HARVEY. [SEAL.]
DANIEL J. SCHUYLER. [SEAL.]

Subscribed and acknowledged before me this — day of January, 1877.

—— ——.

STATE OF ILLINOIS, } ss:
Cook County, }

—— ——, being duly sworn, upon oath says that he is the surety named in the foregoing bond; that he is a resident and freeholder of said county, and is worth the sum of ten thousand dollars over and above all his liabilities.

—— ——.

Subscribed and sworn to before me this — day of January, 1877.

—— ——.

249 And on the day and year last aforesaid, to wit, January 31, A. D. 1877, the same being one of the days of the January term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

PEOPLE'S BANK OF BELLEVILLE
vs.
MANUFACTURERS' NATIONAL BANK OF CHICAGO. } Assumpsit.

This day comes the defendant, by Gardner and Schuyler, its attorneys, and files herein its petition based on affidavit to remove this cause to the United States circuit court in and for the northern district of Illinois; and it appearing to the court that the said defendant has filed its bond conditioned according to the act of Congress in such case made and provided, and that the due notice of the defendant's application herein has been had on the plaintiff's attorney, on motion of the defendant, it is ordered that said cause be, and the same is hereby, transferred to the said United States circuit court, and that the clerk of this court do forthwith transmit to said United States circuit court a full transcript of all papers and pleadings on file herein, together with all orders made and entered of record herein.

250 STATE OF ILLINOIS, }
Cook County, } *ss:*

I, John J. Healy, clerk of the superior court of Cook county within and for the State of Illinois, do hereby certify that the above and foregoing is a full, true, and complete transcript of all papers and pleadings now on file in my office and of all orders made and entered of record in said court in a certain cause lately pending in said court on the common-law side thereof, wherein The People's Bank of Belleville was plaintiff and The Manufacturers' National Bank of Chicago defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 6th day of February, A. D. 1877.

JNO. J. HEALY, *Clerk.* [SEAL.]

Endorsed: Filed February 22, '77. Wm. H. Bradley, clerk.

251 *Stipulation.*

In the Circuit Court of the United States for the Northern District of Illinois. May Term, 1877.

PEOPLE'S BANK OF BELLEVILLE, ILLS.,
vs.
MANUFACTURERS' NATIONAL BANK OF CHICAGO. }

It is stipulated to waive a jury in the above-entitled cause and to submit the same to the court to be tried without a jury.

GEO. W. SMITH, *Pl'ff's Att'y.*
GARDNER & SCHUYLER,
Def't's Att'ys.

(Endorsed:) Filed May 16, '77. Wm. H. Bradley, cl'k.

252 United States Circuit Court. May Term, 1877.

People's Bank of Belleville
vs.
Manufacturers' National Bank of Chicago.

Additional Counts.

And for that whereas the defendant, on the 8th day of August, A. D. 1874, at the county of Cook and State of Illinois aforesaid, was indebted to the plaintiff in the sum of eighty thousand dollars for money before that time lent by the plaintiff to the defendant at defendant's request and in a like sum for money before that time paid and expended by the plaintiff for the use of the defendant at defendant's request, and in a like sum for money before that time received by the defendant for the use of the plaintiff, and in the like sum for interest on divers sums of money before that time forborne by the plaintiff to the defendant at its request for divers spaces of time before then elapsed; and, being so indebted, the, defendant in consideration thereof, then and there promised the plaintiff to pay it on request the several sums of money due it as aforesaid, but the defendant, though requested, has not paid the same or either of them or any part thereof to the plaintiff, but refuses so to do.

G. W. SMITH and
C. W. THOMAS,
For Pl'tff.

253 *Copy of Account Sued On.*

Manufacturers' National Bank of Chicago to the People's Bank of Belleville, Dr.

To money lent	$80,000
To money paid and expended	80,000
To money received	80,000
To interest	80,000

Endorsed: Filed June 1, '77. Wm. H. Bradley, clerk.

254 United States Circuit Court, Northern District of Illinois.

Saturday, *June 28th*, 1879.

Present: Hon. Henry W. Blodgett, district judge.

People's Bank of Belleville
vs. } Assumpsit.
Manufacturers' National Bank of Chicago.

Now come the parties, by their attorneys, and upon issue joined by agreement of the parties, as per stipulation filed, they waive the intervention of a jury and for trial put themselves upon the court; and, after hearing a part of the evidence by agreement, it is ordered that the further trial of the cause is postponed to a future day.

255 TUESDAY, *July* 1, 1879.

Present: Hon. Henry W. Blodgett, district judge.

PEOPLE'S BANK OF BELLEVILLE
vs. Assumpsit.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO.

Now comes the plaintiff, by George W. Smith, Esq., its attorney, and on his motion it is ordered that the pleas filed herein stand to the amended count as well as to the original declaration, and the parties, having no further evidence to introduce, submit the cause to the court upon briefs to be furnished, and the court takes the same under advisement.

256 FRIDAY, *July* 18*th*, 1879.

Present: Hon. Henry W. Blodgett, district judge.

THE PEOPLE'S BANK OF BELLEVILLE
vs. Assumpsit.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO.

Now come the parties, by their attorneys, and the court, having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the defendant, and on motion of the defendant, by its attorney, for judgment herein, it is thereupon considered and adjudged by the court that the defendant do have and recover of the plaintiff its costs and charges about its defense in this behalf expended, amounting to the sum of thirty-five dollars and fifteen cents, and that it have execution therefor.

257 *Bill of Exceptions.*

United States of America, Northern District of Illinois.

THE PEOPLE'S BANK OF BELLEVILLE
vs. Assumpsit.
THE MANUFACTURERS' NATIONAL BANK.

Be it remembered that upon the trial of this cause the following proceedings were had, to wit:

And now, on this 18th day of July, A. D. 1879, come the said parties, by their respective attorneys, and, this cause coming on to be tried, the issues of fact are submitted to the court without the intervention of a jury; whereupon the court hears the evidence, and, being fully advised in the premises, finds as a special finding herein as follows:

That on the 5th day of August, A. D. 1873, one Henry E. Picket made his ten promissory notes of that date, each for $5,000. all payable to his own order, by him endorsed, and bearing interest from date at the rate of ten per cent. per annum, payable semi-annually and payable one year from their date, each of which notes are described in the declaration herein, and delivered them to defendant to be negotiated to plaintiff in pursuance of a prior agreement between Picket and defendant that defendant should so negotiate said notes and apply the money arising therefrom to the cancellation of other indebtedness then due from Picket to defendant.

That on the 8th day of August, A. D. 1873, one M. D. Buchanan, then vice-president and one of the directors of defendant, with the knowledge and consent of the president and cashier of de-
258 fendant, who were also directors of said bank, but without any authority of the board of directors as a board or of a majority of them individually or any notification by the board of directors as a board, transmitted the said notes to plaintiff with a letter, a copy of which is attached to the declaration and in which occurs the following language:

"In accordance with your telegram I herewith hand you 10 notes of $5,000 each, Henry E. Pickett, dated August 5th, 1873, 10 per cent., semi-annually, $50,000; we debit your account $50,000.

This bank hereby guarantees the prompt payment of the principal sum and interest at maturity of said notes."

This letter was written on one of defendant's letter-heads and signed "M. D. Buchanan, vice-president." The notes were all endorsed "Henry E. Pickett," and below "M. D. Buchanan, vice-president Manufacturers' National Bank," as shown by the copies attached to the declaration. The defendant was plaintiff's correspondent at Chicago, and plaintiff's account with defendant was debited July 5th, 1873, with $50,000 on account of said notes. When the plaintiff's account was so debited Pickett's paper in defendant's hand was cancelled to the same amount.

That the said notes were all duly protested for non-payment at their maturity and notice thereof given to defendant, and none of them nor any part of them or either of them, principal or interest, has ever been paid.

And thereupon the court found the law to be with the defendant.

It is therefore considered and adjudged by the court that the
259 defendant have and recover of the plaintiff its proper costs herein to be taxed, and that execution be awarded therefor.

And now, on the 18th day of July, A. D. 1879, come again the parties, and, on motion of plaintiff, a writ of error is allowed in this case from the Supreme Court of the United States upon plaintiff entering into bond by July 28th, 1879, in the penal sum of five hundred dollars, conditioned according to law.

And thereupon the court found the issues of law to be with the defendant, and that the defendant was and is not in any manner liable to pay said notes, and to this finding of the court the plaintiff at the time excepted.

The foregoing being all the facts in the case, the pl'ff excepts to the conclusions of law by the court on said facts.

H. W. BLODGETT, *Judge.*

Endorsed: Filed July 18, 1879. Wm. H. Bradley, clerk.

260 *Bond on Writ of Error.*

Supreme Court of the United States.

THE PEOPLE'S BANK OF BELLEVILLE
vs.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO. } Assumpsit.

Know all men by these presents that we, The People's Bank of Belleville, as principal, and Charles W. Thomas, Sebastian Fietsam, F. H. Pieper, and Albert G. Badgley, as sureties, are held and firmly bound unto The Manufacturers' National Bank of Chicago in the penal sum of five hundred dollars, to *the* paid to the said Manufacturers' National Bank of Chicago, its assigns or legal representatives; to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this twenty-second day of July, A. D. 1879.

Whereas the above-named People's Bank of Belleville hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the northern district of Illinois:

261 Now, therefore, the condition of this obligation is such that if the above-named People's Bank of Belleville shall prosecute its said writ of error with effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to be and remain in full force and virtue.

[SEAL.] THE PEOPLE'S BANK OF BELLEVILLE,
By SEBASTIAN FIETSAM, *Its President.*
CHARLES W. THOMAS. [SEAL.]
SEBASTIAN FIETSAM. [SEAL.]
F. H. PIEPER. [SEAL.]
A. G. BADGLEY. [SEAL.]

Approved:
H. W. BLODGETT, *Judge.*

(Endorsed:) Filed July 26, 1879. Wm. H. Bradley, cl'k.

262 *Mandate.*

[SEAL.] UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Whereas lately, in the circuit court of the United States for the northern district of Illinois, before you or some of you, in a cause between The People's Bank of Belleville, plaintiff, and The Manufacturers' National Bank of Chicago, defendant, wherein the judgment of the said circuit court, entered in said cause on the 18th day of July, A. D. 1879, is in the following words, viz:

"Now come the parties, by their attorneys, and the court, having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the defendant; and on motion of the defendant, by its attorney, for judgment herein it is thereupon considered and adjudged by the court that the defendant do have and recover of the plaintiff its costs and charges about its defence in this behalf expended, amounting to the sum of thirty-five dollars and fifteen cents, and that it have execution therefor," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and seventy-nine, the said cause came on to be heard before the said Supreme Court on the said transcript of record and was argued by counsel; on consideration
263 whereof it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that the said plaintiff, The People's Bank of Belleville, recover against the said defendant sixty-six dollars and six cents for its costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court with directions to enter a judgment in favor of the plaintiff in error.

2nd March, 1880.

You therefore are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and judgment of this Court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the fifteenth day of May, in the year of our Lord one thousand eight hundred and eighty.

Costs of plaintiff:

Clerk	$46 06
Attorney	20 00
	$66 06

Taxed by—

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Endorsed: Filed May 26, 1880. Wm. H. Bradley, clerk.

264 MONDAY, *May* 31*st*, 1880.

Present: Hon. Henry W. Blodgett, district judge.

PEOPLE'S BANK OF BELLEVILLE
vs.
MANUFACTURERS' NATIONAL BANK OF CHICAGO. } Assumpsit.

Now comes the plaintiff, by its attorney, and files the mandate from the Supreme Court of the United States; and thereupon the court finds the issues for the plaintiff and assesses its damages against said defendant at the sum of sixty-seven thousand two hundred and seventy-seven dollars and seventy-seven cents. It is thereupon considered and adjudged by the court that the plaintiff have and recover of the defendant the said sum of sixty-seven thousand two hundred and seventy-seven dollars and seventy-seven cents, its damages so as aforesaid found, together with its costs and charges in this behalf expended, taxed at the sum of — dollars and — cents, and that execution issue therefor.

265 On the same day, to wit, on the sixteenth day of June, 1888, came the assignee of the People's Bank of Belleville, by his solicitors, and filed in said clerk's office his exceptions to the master's report in said entitled cause; which said exceptions are in the words and figures following, to wit:

Exceptions.

In the Circuit Court of the United States for the Northern District of Illinois.

IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } In Chancery.

The exceptions taken by the assignee of the People's Bank of Belleville to the report made herein by Henry W. Bishop, Esq., one of the masters of this court, which report bears date on or about 15th day of April, A. D. 1888.

First exception. For that the said master in his said report found as a matter of fact that the consideration for the conveyance made by Pickett to Holmes was Pickett's release from the payment of his notes mentioned in said report, whereas said master should have found that said Pickett was not released from said payment by reason of anything disclosed by the evidence.

Second exception. For that the said master in his said
266 report found from the evidence that Pickett was released and discharged from any further liability upon his original indebtedness mentioned in said report, whereas said master should have found that said Pickett was not so released or discharged.

Third exception. For that the said master in his said report found, as a matter of fact, that the original contract of guaranty made by the Manufacturers' National Bank, mentioned in said report, was changed by the taking of new security and an extension of time resulting therefrom, whereas he should have found that said contract of guaranty had not been affected or impaired by anything disclosed by the testimony.

Fourth exception. For that said master in his said report found, as a matter of law, that the Manufacturers' National Bank, as a guarantor of the notes mentioned in the evidence, and said report as having been guaranteed by it, was released from liability on account of its said guaranty, whereas said master should have found that said bank was not so released.

Fifth exception. For that the said master in his said report recommended that the claim of said assignee herein be disallowed, whereas said master should have recommended that said claim be allowed.

CHARLES W. THOMAS &
F. A. McCONAUGHY,
Solicitors for Assignee of the People's Bank of Belleville.

(Endorsed:) Filed June 16th, 1888. Wm. H. Bradley, clerk.

267 Afterwards, to wit, on the nineteenth day of October, 1888, came the complainants, by their solicitors, and filed in said clerk's office their objections and exceptions to the master's report in said entitled cause; which said objections and exceptions are in the words and figures following, to wit:

Objections and Exceptions.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Circuit Court of the United States for the Northern District of Illinois. October Term, A. D. 1888.

IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } Chancery.

Objections and exceptions filed on behalf of complainants the nineteenth day of October, A. D. 1888.

Now come the complainants, by D. J. Schuyler and Henry B. Mason, their solicitors, and object and except to the master's report filed herein the sixteenth day of June, A. D. 1888, for the following reasons, among others:

First. For rejecting the claim of the assignee of the People's Bank of Belleville.

Second. For finding and reporting the claim of the assignee of the People's Bank of Belleville to be based upon a guaranty
268 of the Manufacturers' National Bank, whereas it is based upon a deposit in said last-mentioned bank.

Third. For finding that the guaranty given by said last-mentioned bank was impaired in any way by subsequent transactions.

Fourth. For finding and reporting that Henry E. Pickett was released from his indebtedness to the People's Bank of Belleville in any other way than his discharge from bankruptcy.

Fifth. For finding and reporting that the People's Bank of Belleville assented to said Pickett's release from his indebtedness to said bank.

Sixth. For finding and reporting that new security was taken upon the Pickett indebtedness and the time of said indebtedness extended.

Seventh. For finding and reporting that any such new security or extension of time released the Manufacturers' National Bank from liability.

Eighth. For not finding and reporting that the real estate securing the Pickett notes was sold at public sale and the proceeds thereof credited on said notes, and that the Manufacturers' National Bank remained liable upon its guaranty for the unpaid balance of said notes.

Ninth. For finding and reporting that the assessment upon stockholders should be based upon Schedules A, B, and C of said master's report instead of Schedules D, E, and F of said report.

269 D. J. SCHUYLER,
HENRY B. MASON,
Complainants' Solicitors.

(Endorsed:) Filed Oct. 19, 1888. Wm. H. Bradley, clerk.

270 Afterwards, to wit, on the twenty-second day of October, in the adjourned October term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

AGNES F. IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } In Chancery.

On motion of the assignee of the People's Bank of Belleville, this cause is set for hearing on the thirty-first instant on his exceptions to the master's report herein, and said assignee is excused from printing the pleadings.

271 Afterwards, to wit, on the thirteenth day of November, in the adjourned October term of said court, 1888, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, in the following entry, to wit:

Order.

AGNES F. IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause, being set for hearing this day upon the master's report, filed June 16, 1888, the exceptions thereto, and the pleadings and proofs, now comes on to be heard, and after hearing the arguments of counsel thereon the court takes the same under advisement.

272 Afterwards, to wit, on the third day of December, 1888, there was filed in said clerk's office the opinion of Judge Blodgett in said entitled cause; which said opinion is in the words and figures following, to wit:

Opinion.

Circuit Court of the United States, Northern District of Illinois.

AGNES IRONS, Executrix, &c.,
vs.
THE MANUFACTURERS' NATIONAL BANK *et al.*
} December 3, 1888.

BLODGETT, *J.:*

This cause was referred to one of the masters of the court to ascertain and report the amount of indebtedness owing by the defendant bank and the amount of assessment to be made against the stockholders of the bank for the purpose of paying such indebtedness, in conformity with the opinion of the Supreme Court when this cause was before that Court on appeal, which is reported in 21 U.S., p. 27.

The report of the master has been filed and all parties seem satisfied with his findings, except the People's Bank of Belleville, who had presented a large claim against the bank which the master has disallowed, and exceptions are filed by this claimant, the 273 substance of these exceptions being that the master has erred in finding that the defendant bank is not liable on this claim.

This claim of the People's Bank of Belleville is based upon a guaranty of payment made by the Manufacturers' National Bank of eight notes of $5,000 each given by Henry E. Pickett, dated August 5, 1873, and due in one year from date, which were discounted for the Manufacturers' National Bank soon after their date by the People's Bank of Belleville. These notes were secured by a trust deed upon land in the vicinity of the city of Chicago. The Manufacturers' National Bank suspended payment and went into voluntary liquidation on or about the 23rd of September, 1873, and, when these notes matured about a year afterwards, dealings were had between the People's Bank of Belleville and Ira Holmes, then acting as president of the Manufacturers' National Bank, in liquidation, and assuming to act also for his bank, by which the title to the real estate held as security for the payment of these notes was transferred to Holmes, and Holmes thereupon gave his notes for the amount due on the Pickett notes, and also for a large amount of other indebtedness held by the People's Bank on which the Manufacturers' National Bank or Holmes or both were liable, and, as is found by the master, Pickett, in consideration of a quitclaim deed from himself and

wife to Holmes of the land covered by the trust deed securing
274 his notes, was released from further liability on these notes.
The master found that this release of Pickett from the notes which the Manufacturers' National Bank had guaranteed operated to release the guarantor, and hence the master rejected the claim.

I do not intend to go into an analysis or statement of the proof upon which the master made his finding, as it will be sufficient to say that I have examined these proofs, and am of opinion that they fully sustain the master's conclusions. It is urged, however, that as the proof shows that the People's Bank of Belleville brought suit on this guaranty now in question and obtained judgment thereon, that such judgment is conclusive against the defendants in this case, who are stockholders in the Manufacturers' National Bank, against whom an assessment is asked. Aside from the authorities cited, which satisfy me that the stockholders of the Manufacturers' National Bank are not concluded by this judgment, which was rendered after the bank went into liquidation, I think the fact shown in this record that the dealings between the People's Bank of Belleville and Holmes and Pickett by which Pickett was released were unknown to the defendant stockholders at the time this judgment was rendered should
allow these stockholders to go behind the record of that judg-
275 ment and raise the question before the court in this suit
whether the guaranty was released by the release of Pickett, the principal debtor, whose notes were guaranteed. The exceptions to the master's report are therefore overruled and the report confirmed.

Two other questions were suggested upon the final argument of the case which it becomes necessary to say a word upon: The first is, As to who is liable for the costs incurred in this case against the stockholders? After a careful consideration of that question I have come to the conclusion that these defendant stockholders all stand in the condition of any ordinary defendants in common or joint defendants, and the costs must be borne by them as if they were codefendants in any ordinary suit.

Another question that was raised was in regard to the costs of the appeal which was taken by the stockholders from the decree formerly entered in this case. The former decree was reversed on this appeal, and the appellants in that case recovered costs against the appellee. The appellee also incurred expenses in the printing of records and briefs, &c., upon this appeal, all of which it would be unjust to charge against Mrs. Irons, the complainant in this case, because she stands merely in a representative capacity, prosecuting this suit for the benefit of the creditors of the bank, and hence it
seems to me that it is just, and I shall have it so provided in
276 the decree that on the payment of the money assessed against
the stockholders into the hands of the clerk of the court the clerk first ascertain the amount of costs which were recovered against the appellee, and also tax the costs which the appellee incurred in the defence of that appeal, and deduct, before any dividend is made to the creditors, the expenses thus incurred. This will protect Mrs. Irons, I think, which should properly be done.

A decree may also be prepared directing the defendant stockholders to pay, and I presume it will be more convenient for them (this is merely a suggestion of my own, and has not been made by their counsel), and my suggestion is that an installment of 25 per cent. be paid in thirty days, an installment of 25 per cent. in sixty days, an installment of 25 per cent. in 90 days, and the balance in 120 days, making the decree all paid up in 120 days. If this is not desired by the counsel representing stockholders, a decree may be made for the payment of the whole amount in sixty days; the counsel may consult together about that. The clerk will, under the direction of the master, tax the costs that were necessarily incurred by the defendants in resisting the claim of the People's Bank of Belleville, and the decree will adjudge these costs to be paid by the People's Bank of Belleville, but the cost of the master's fees upon
this reference may go into the general costs of the case,
277 because it is impossible to divide it and see how much of the
labor done by the master upon this reference was given to the claim of the People's Bank of Belleville and how much to the general adjustment against each stockholder.

(Endorsed:) Filed Dec. 3, 1888. Wm. H. Bradley, clerk.

278 Afterwards, to wit, on the twenty-seventh day of March, in
the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

AGNES F. IRONS and ANDREW H. FOSKETT, Executrix and Executor of the Estate of James Irons, Deceased, *et al.*,
vs.
MANUFACTURERS' NATIONAL BANK OF CHICAGO *et al.*
} In Chancery.

This cause coming on for final hearing upon the mandate and decision of the Supreme Court of the United States and upon the pleadings and evidence and arguments of counsel, the court, being now fully advised in the premises, doth reaffirm its conclusions of law and fact heretofore entered of record on, to wit, July 23rd, 1883, in the interlocutory decree in this cause and doth vacate the decree heretofore entered of record on, to wit, June 1, 1886, and doth now find that the net amount due to the creditors of said bank whose claims have been proved and allowed in this case, with interest thereon at the rate of six (6) per centum
per annum from the time of the failure of said bank to
279 March 25th, 1888, amounts to the sum of ninety-one thou-
sand four hundred and twenty dollars and fourteen cents ($91,420.14), and that the resources of the said bank outside of stock liability have been exhausted, and that the shareholders of said bank (except those discharged in bankruptcy) are individually responsible, equally and ratably and not one for another, for all the aforesaid indebtedness to the extent of the amount of their stock herein at the par value thereof, in addition to the amount invested in such shares, and that the estate and funds in the hands of William Henri Adams, administrator *de bonis non* of William H. Adams, deceased,

and in the hands of Andrew J. McDuffee and Rollin S. Williamson, executors of the last will and testament of Joseph L. McDuffee, deceased, and in the hands of Frederick M. Tilden, administrator of the estate of William M. Tilden, deceased, and in the hands of M. M. Richmond, administrator of the estate of Alonzo M. Richmond, deceased, are respectively liable in like manner and to the same effect as the said William H. Adams, Joseph L. McDuffee, William M. Tilden, and Alonzo M. Richmond, respectively, would be if each were living and competent to act and held the stock in his own name, the court further finding that the executors and administrators aforesaid, under and by virtue of their appointment as such, possessed themselves of the estates of the respective decedents
280 sufficient to answer every legal and equitable demand touching the matters in question in this cause relating to the shares of stock in said Manufacturers' National Bank owned by the said William H. Adams, Joseph L. McDuffee, William M. Tilden, and Alonzo M. Richmond, respectively, and that an assessment of eighteen and twenty-one hundredths per cent. (18.21) upon the capital stock of said bank will be necessary to meet the liabilities of said bank upon March 25, 1888, the date of the computations in the master's report last filed herein.

It is therefore ordered, adjudged, and decreed that this bill be dismissed for want of equity as to the several defendants, Ira Holmes, Edgar Holmes, William G. E. Pope, and Milford D. Buchanan by reason of the sufficiency of their respective discharges in bankruptcy pleaded herein.

281 The court further orders and decrees that the following are the valid outstanding claims against Manufacturers' National Bank:

Names of creditors.	Principal of claims.	Interest at 6 % per annum from Sept. 25, 1873, date of bank's going into voluntary liquidation, down to March 25, 1888.	Aggregate amount due March 25, 1888.
George Taylor, trustee	15,000	13,050	28,050
Gerts, Lombard & Co.	720 43	626 76	1,347 19
Estate of M. Foley	1,240 71	1,079 40	2,320 11
Aaron Wilcox & Co.	10,000	8,700	18,700
Hide and Leather Bank	1,969 74	1,713 66	3,683 40
Joseph Shugart	338 71	294 66	633 37
Chandler & Craig	384 93	334 88	719 81
Thomas Mahoney	650	565 50	1,215 50
Adaline E. Kent	6,250	5,437 50	11,687 50
Estate of Jas. Irons	11,596 75	10,089 17	21,685 92
C. E. Pope	336 55	292 79	629 34
Mrs. H. V. Dunton	400	348	748
	48,887 82	42,532 32	91,420 14

It is thereupon severally ordered, adjudged, and decreed that each one of the hereinafter persons do pay to the clerk of this court for the benefit of all the creditors of said bank the sum hereinafter set opposite such person's name, with interest on said amount, at the rate of six (6) per centum per annum, from March 25, 1888, down to the date of payment, and that upon default in payment thereof within thirty days from this date the said complainants may have
execution therefor as at common law, namely, Charles Os-
282 borne, $182.80; Mrs. A. E. Canfield, $438.72; William A.
Butters, $182.80; Joseph A. Holmes, $9,140; Edward Leonard, $182.80; Thomas D. Snyder, $914; Monroe Heath and William F. Milligan, jointly and severally, $365.60; Thomas Lord, $1,462.40; Charles Hutchinson, $914; Morris Merrill, $146.24; Charles Comstock, $2,742; Gill W. Peaslee, $914; Frederick M. Tilden, in due course of administration as administrator of the estate of William M. Tilden, deceased, $1,462.40; Charles E. Ray and William C. Whitney, jointly and severally, $1,828; Andrew J. McDuffee and Rollin S. Williamson, in due course of administration as executors of estate of Joseph L. McDuffee, deceased, $914; Marshall Field, $914; Silas B. Cobb, $914; William Henri Adams, in due course of administration as administrator *de bonis non* of William H. Adams, deceased, $4,387.20; M. M. Richmond, in due course of administration as administrator of the estate of Alonzo Richmond, deceased, $1,828.

This court doth further find, in accordance with the stipulation of the parties in interest, that the claim introduced in evidence in this case under the name of George Taylor, trustee, is the property of Charles Comstock, James Kelly, and the estate of William M. Tilden, the said Comstock, Kelly, and Tilden having paid the same as sureties and having been subrogated to the rights of the
said trustee and his *cestuis que trust.*, and the said Comstock,
283 Kelly, and estate of Tilden are entitled in equal proportion
to any dividends that may be paid upon said claim; but they have no right to offset said claim in any manner against stock liability or against any decree or judgment founded on such liability.

This court doth further find from the evidence that this cause in chancery was necessary to ascertain the debts of the bank, administer its assets, and ascertain the liability of its stockholders, and that the following stockholders at the time of the failure of the bank owned and still own the shares herein set opposite their names, respectively, viz: Mrs. S. D. Bushnell, fifty (50) shares; Mrs. N. Hannah, ten (10) shares; H. P. Stanley, fifty (50) shares; E. M. Moffett, fifty (50) shares; E. A. Sowles, twenty-five (25) shares; S. F. Field, fifty (50) shares, and David Linton or Sinton, fifty-five (55) shares, and when found should pay to the receiver in this cause or to one of its solicitors, for the benefit of all the creditors of said bank, the sums herein set opposite their names, respectively, viz: Mrs. S. D. Bushnell, $914; Mrs. N. Hannah, $182.80; H. P. Stanley, $914; E. M. Moffett, $914; E. A. Sowles, $457; S. F. Field, $914, and David Sinton or Linton, $1,005.40, with interest at six (6) per cent. per

annum on each one of said sums, respectively, from March 25, 1888, and that Agnes F. Irons and Andrew H. Foskett or any other
284 creditor, for the benefit of all the creditors of said bank, have leave, by original or supplemental proceedings, either in law or equity, as they may be advised, to proceed against each and any of the said stockholders, Bushnell, Hannah, Stanley, Moffett, Field, and Sinton or Linton, to enforce said stock liability; but such proceedings shall not delay or affect the distribution of any funds paid in under this decree.

And it appearing that John N. Gage has died since the decision of this cause, but prior to the entry of a decree herein, it is ordered that this cause be retained as to the heirs, executors, and administrators of the said John N. Gage, and that the complainants have leave to file a bill of revivor against the executors or administrators of the said John N. Gage.

It is ordered that costs to the amount of $158.60 be taxed against the People's Bank of Belleville and the assignee thereof.

It further appearing to the court that the costs taxable against defendants in this cause are about equal to the costs taxed in their favor in the Supreme Court of the United States, now, therefore, by consent of the parties interested, it is ordered that the costs for and against the defendants be set off one against the other, and to be thereby, and the same are hereby, decreed to be satisfied and extinguished.

285 It is further ordered that the fees of Henry W. Bishop, Esquire, master in chancery of this court, be taxed at the sum of one thousand dollars, and that the said fees and any unpaid costs of the clerk and marshal of this court be paid out of the funds to be paid under and by virtue of this decree.

It is further ordered, by consent of all parties interested, that D. J. Schuyler and Henry B. Mason, solicitors in behalf of the complainants and the other creditors in this cause, are entitled to receive out of the funds paid under and by virtue of this decree the sum of five thousand dollars each for legal services, and also the amount of their disbursements in and about this cause, namely, the said D. J. Schuyler, $619.00, and the said Henry B. Mason, $1,984.75, but that out of the total amount to be paid for master's, clerk's, marshal's, and solicitor's fees, costs, and disbursements one thousand dollars shall be taken from the amount coming to Charles Comstock, James Kelly, and the estate of William M. Tilden, as creditors under this decree, and the balance shall be paid out of the amounts coming to the other creditors under this decree.

Thereupon the assignee of the People's Bank of Belleville doth come and pray an appeal from the said decree for disallowing the claim of said assignee of said bank and for apportioning any of the costs upon said assignee or upon said bank, which appeal is
286 allowed to the Supreme Court of the United States upon the said appellant filing appeal bond herein, with surety, to be approved by the court, the penalty of said bond to be in the amount of five hundred dollars, but such appeal shall not operate as a supersedeas or in any manner delay the execution of this decree.

287 Afterwards, to wit, on the eleventh day of April, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

AGNES F. IRONS and ANDREW H. FOSKETT, Executrix and Executor of the Estate of James Irons, Deceased, *et al.*
vs.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO *et al.*
} In Chancery.

Now comes the intervening petitioner, The People's Bank of Belleville, herein, by Franklin A. McConaughy, its solicitor, and suggests of record the resignation of Joseph Penn, assignee of the People's Bank of Belleville and the appointment of Sebastian Fietsam to the position of assignee of said last-named bank, and, on motion of the solicitor for said intervening petitioner, it is ordered that the name of said Sebastian Fietsam, assignee as aforesaid, be substituted of record, and that he be permitted to prosecute the appeal in this behalf to the Supreme Court.

288 On the same day, to wit, on the eleventh day of April, 1889, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

In the Circuit Court of the United States, Northern District of Illinois.

AGNES F. IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.*
} In Equity.

In the matter of the claim of the People's Bank of Belleville, now represented by Sebastian Fietsam, its assignee, by all parties in interest.

For the purpose of shortening the record in this case it is agreed that the following, which constitutes all the pleadings, evidence, and orders applicable to said claim or necessary to be considered in adjudicating upon the same, shall constitute the record on this appeal:

1. Placita.
2. Amended bill. Answer of Charles Comstock, which shall be considered as the same as all other defendants made in the case. Replications.
3. Original order of reference.
4. Intervening petition of assignee of People's Bank of Belleville. 289
5. Affidavit of claim of People's Bank of Belleville.

6. The evidence (notes, etc.) in support of claim of People's Bank of Belleville.
7. All testimony of Ira Holmes, Henry E. Pickett, and C. W. Thomas on first reference.
8. Master's findings (June 6th, 1885).
9. Item 44, Schedule "A" (claim of People's Bank of Belleville).
10. Order appointing receiver.
11. Decree of June 1, 1886.
12. Interlocutory orders regarding this claim.
13. Affidavit of Henry G. Miller.
14. Order reopening case and sending same back to master in chancery.
15. Further testimony of Ira Holmes, Henry E. Pickett, and C. W. Thomas, attached to report of master in chancery, June 16th, 1888; also documents to report. Register's Exhibit. (Bankruptcy schedule.)
16. Files in case of assignment (assignee) of People's Bank of Belleville *vs.* Manufacturers' National Bank.
17. Part of master in chancery's report of June 16th, 1888, disallowing claim of People's Bank of Belleville.
18. Exceptions to this report.
19. Opinion of court.
20. Decree.

It is further stipulated that sundry claims against the stockholders in favor of various claimants to the amount of $250,000
290 have been allowed upon intervening petitions in this cause.

F. A. McCONAUGHY & C. W. THOMAS,
Att'y's for Sebastian Fietsam, Assignee of the People's Bank of Belleville, Ill.
H. B. HURD, *Sol'r for Defendants.*

(Endorsed:) Filed Apr. 11, 1889. Wm. H. Bradley, clerk.

291 Afterwards, to wit, on the twelfth day of April, 1889, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Sebastian Fietsam, assignee of the People's Bank of Belleville, Illinois, and William Maus are held and firmly bound unto Agnes F. Irons and Andrew H. Foskett, executrix & executor of the last will of James Irons, and the other complainants in this suit in the full and just sum of five hundred dollars ($500), to be paid to the said above obligees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of March, A. D. 1889.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in the said

court between said Agnes F. Irons and others and The Manufacturers' National Bank and others (in which suit the obligor herein intervened), a decree was rendered against the said Sebastian Fietsam, assignee of the People's Bank of Belleville (Illinois), and disallowing the claim of the said assignee; from which said decree of the said United States circuit court the said Sebastian
292 Fietsam, as assignee as aforesaid, has prayed for and been granted an appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Sebastian Fietsam, assignee of the People's Bank of Belleville (Illinois) as aforesaid, shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea good and the said decree shall be affirmed, then the above obligation to be void; else to remain in full force and virtue.

SEBASTIAN FIETSAM, [SEAL.]
Assignee of the People's Bank of Belleville.
WILLIAM MAUS. [SEAL.]

STATE OF ILLINOIS, }
St. Clair County, } *ss:*

I, the undersigned notary public, hereby certify that the within-named Sebastian Fietsam and William Maus, personally appeared before me and acknowledged that they signed and sealed the attached bond for the uses and purposes therein set forth; and I further certify that the said William Maus, after being duly sworn, stated on his oath that he was worth in real and personal property more than one thousand dollars over and above all debts, liabilities, and exemptions.

[SEAL.] HENRY E. SCHRADER,
Notary Public.

293 Approved, but appeal not to supersede execution of decree or in any way to affect decree except as to claim of appellant.

H. W. BLODGETT.

(Endorsed:) Filed April 12th, '89. Wm. H. Bradley, cl'k.

294 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the matter of the petition of the assignee of the People's Bank of Belleville, Illinois (in accordance with the stipulation filed April eleventh, 1889), in the cause wherein Agnes F. Irons and Andrew H. Foskett, executrix and executor of the estate of James Irons, deceased, *et al.* are the complainants and The Manufacturers' National Bank of Chicago *et al.* are the defendants, as the same appear from the records and files of said court now remain-g in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, northern division, this twenty-second day of May, 1889.

Seal of Circuit Court
U. S., Northern Dist.
Illinois, 1855.

WM. H. BRADLEY, *Clerk.*

295 In the Supreme Court of the United States, to the October Term, A. D. 1889.

AGNES F. IRONS, EX., *et al.*
vs.
MANUFACTURERS' NATIONAL BANK OF CHICAGO, OF ILLINOIS.

Appeal from the circuit court of the United States for northern district of Illinois.

And now comes the appellant, an intervenor in said cause, Sebastian Fietsam, assignee of the People's Bank of Belleville (Illinois), by Franklin A. McConaughy, his attorney, and shows to the court that the record herein contains manifest error in this:

1st. The court erred in reopening the decree in this cause after the same had been remanded from this court.

2nd. The court erred in re-referring this cause to the master in chancery to take further proofs and make further report as to the said claim of this appellant, the said Sebastian Fietsam, assignee as aforesaid.

3rd. The court erred in not sustaining the several exceptions of this appellant to the report of Henry W. Bishop, Esq., the master in chancery to whom said cause was referred.

4th. The decree of the court herein is erroneous in that it
296 disallows the claim of this appellant, Sebastian Fietsam, assignee of People's Bank of Belleville as aforesaid.

5th. The said decree herein is erroneous in this, that it decrees that this appellant, assignee as aforesaid, shall pay the sum of $158.60, costs in the said proceedings.

Wherefore, by reason of the errors above specified and other manifest error in the said record, this appellant, Sebastian Fietsam, assignee of the People's Bank of Belleville (Illinois), prays for a reversal of said decree and a citation to the defendants herein.

SEBASTIAN FIETSAM,
Assignee of the People's Bank of Belleville (Illinois).

By FRANKLIN A. McCONAUGHY,
Attorney for said Appellant.

Endorsed on cover: N. Illinois C. C. U. S. No. 1370. Henry E. Schrader, assignee of the People's Bank of Belleville, Illinois, appellant, *vs.* The Manufacturers' National Bank of Chicago *et al.* Filed October 16, 1889.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1889.

No. 1370.

HENRY E. SCHRADER, ASSIGNEE OF THE PEOPLES BANK
OF BELLEVILLE,
Appellant,

—*vs.*—

THE MANUFACTURERS NATIONAL BANK OF CHICAGO,
ILLINOIS, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS.

STATEMENT, ARGUMENT AND BRIEF OF APPELLANT.

FRANKLIN A. McCONAUGHY,
for the Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term. A. D. 1889

No. 1370.

HENRY E. SCHRADER, Assignee of the People's Bank of Belleville,
Appellant,
vs.
THE MANUFACTURERS' NATIONAL BANK OF CHICAGO, ILLINOIS, *et al.*,
Appellees.

IN CHANCERY.

Appeal from the United States Circuit Court for the Northern District of Illinois.

STATEMENT OF THE CASE.

The complainant filed this bill in this cause in the usual form, for discovery and to enforce the liability provided by the National Banking Act against the stokholders of the Manufacturer's National Bank, then insolvent. Answers were filed by the defendants, and replications thereto. An amended bill was subsequently filed, and by order of the Court, all the pleadings were made to conform to the amended bill. At this stage of the proceedings, the assignee of the People's Bank of Belleville, (Illinois), then also insolvent, was permitted to intervene, and prove up his claim, and this was done accordingly.

A decree was rendered on the bill and the cause referred to the Master in Chancery, to compute amount due various creditors intervening and to ascertain the amount to be assessed against the different stockholders. The report was filed and the claim of the Assignee of the People's Bank of Belleville, ascertained to be $67,277.00, with interest from May 31st, 1880, and allowed.

A final decree was entered in accordance with the prayer of the bill, exceptions to Master's report being overruled on the first day of June A. D. 1886, and from this decree an appeal was prayed and allowed to this Court. On the appeal, the decree of the lower Court was substantially affirmed. (See 121 U. S. R., 27).

On the remanding of the cause, the claim of the Assignee of the People's Bank of Belleville, was, on the affidavit of Henry G. Miller, Esq., one of the defendants' counsel reopened, the principal ground being a certain agreement entered into between Ira Holmes, president of the Manufacturers' National Bank, and C. W. Thomas, Esq., acting for the People's Bank of Belleville, (see Record pp. 80–89).

The cause was then again sent to the Master in Chancery, to make another computation and assessment, and to hear further proofs and report specially on the claim of the Assignee of the People's Bank of Belleville. The Master in Chancery then proceeded to hear testimony and receive evidence. Here the real controversy in this case began, i. e., as to the rejection of the claim of the People's Bank of Belleville, made by its assignee. The Manufacturers' National Bank had been, up to the time of its suspension, the correspondent of the People's Bank of Belleville, and had a balance due the People's Bank of Belleville, in order to adjust which it delivered with its guarantee, ten promissory notes of $5,000.00 each, made by one Henry E. Pickett, payable to himself and indorsed by him, with his guaranty, to the Manufacturer's National Bank. These notes were secured by a deed of trust on an undivided half of 160 acres of land in Cook County, Illinois, which was considerably incumbered at the time.

The argument for the rejection of this claim is that the agreement in the record, and above referred to, between the People's Bank of Belleville and Ira Holmes, the former president of the Manufacturers' National Bank, together with the action taken thereunder, and in conformity thereto, had the legal effect of discharging the Manufacturers' National Bank and all its stockholders. It being urged that as this was a claim against Pickett, he could not be released without releasing the Bank and its stockholders, and that there was such a mishandling of the real estate security given by Pickett, that it had the effect of releasing both Bank and stockholders.

We insist in behalf of this claim that the record clearly shows that Pickett never was directly or indirectly released and that the arrangement made in regard to the real estate security given by him was entirely just, indispensable to make it realize at all, and to the very best interest of all the parties concerned.

That the sale was conducted under the direction of the Hon. Geo. W. Smith, a perfectly honorable gentleman, that what the land brought on the foreclosure of the deed of trust was a fair test of its value, being a perfectly fair and regular sale, that in addition to all this it was necessary in order to secure the lien, to buy out other undivided interests and to relieve the property from prior incumbrances, amounting to over fifteen thousand dollars.

That at that time, following the panic of 1873, there was great depression in values. It is true Holmes put a very extravagant value upon the property at that time, and claims he paid a large price for the interest he had in the other undivided half, but it appears that he paid for it in bad debts, not cash. (Record p. 112). Further on in the testimony of Holmes (Record p. 119), he says the object of the entire transaction was to secure the People's Bank of Belleville.

It appeared also from the testimony of the same witness, (Record p. 120), that by this arrangement instead of having the original security of an undivided half 160 acres to secure the indebtedness, there was obtained 120 acres intact, after paying $15,000.00 of incumbrances. This is in substance the testimony of Ira Holmes, called for the defendants, and in opposition to this claim he also testified in a general way, positively that the contract above referred to was fully carried out, as it doubtless was. He states on cross-examination (p. 128), that the Pickett notes were never surrendered by the People's Bank.

It must also be remembered that all the paper which was put in at the time of the new arrangement with Holmes, in addition to the Pickett paper of $50,000.00, was also guaranteed by the Manufacturers' National Bank, and that Pickett was insolvent (p. 132–135) as in fact were the makers of all of the paper. There is no pretence even on the part of Holmes that the People's Bank of Belleville intended to release Pickett in any event. (R. p. 133).

Holmes says that undoubtedly the contract of guaranty of this claim was made before the Manufacturers' National Bank went into liquidation. (R. p. 136). From the testimony of Holmes it will be seen that the real estate security of these claims was put in better condition for the guarantying Bank, and that the People's Bank never understood or agreed that Pickett was to be released and that the release or non-release could make no difference in view of his hopeless insolvency. Mr. Holmes also stated that the debt due the People's Bank of Belleville was about $70,000.00 when it suspended, and some interest, and that this claim against the Manufacturers' National Bank was not an ordinary banking transaction, but in effect it was a loan to the latter bank, it being the party receiving the money. It further appeared from the testimony of the same witness (R. p. 112) that the amount at which the indebtedness was taken at the time written arrangement was made between Holmes and Thomas, was $87,465.10, and he gives, as the items making up the sum, $50,000.00 Pickett paper; $15,000.00 incumbrances on the undivided one-half, and some other paper which had been discounted as accommodation by the People's Bank of Belleville for the Manufacturers' National Bank, and some interest.

We insist that the testimony of Chas. W. Thomas, the attendant circumstances, the manner in which the sale was conducted by Gen. George W. Smith, the schedules in bankruptcy of Pickett, and the agreement itself refute the position taken by the opposing counsel.

The part of the Report of the Master in Chancery to which appellant excepted reads as follows:

"I find and report that the claim of the assignee of the People's Bank of Belleville is based upon the guaranty of the Manufacturers' National Bank of promissors notes made by Henry E. Pickett and secured by real estate, amounting in the outset to $50,000; that this guaranty was made by Ira Holmes, who was an officer of said Manufacturers' National

98 Bank, and before the failure of the bank, these notes were secured by a trust deed to Joseph A. Holmes upon the undivided half of the northwest quarter of section ten, township thirty-seven north, range fourteen, being (80) eighty acres, one undivided half of which eighty acres was owned by said Pickett (and a five-acre tract and twenty-six lots) and the other undivided half of said eighty acres by said Ira Holmes individually; that after the maturity of these notes and in the month of August, A. D. 1874. Ira Holmes made a written contract with the People's Bank by which he was to give and did give the bank his promissory notes aggregating the sum of $87,465.00, to secure the Pickett notes (and other indebtedness for which the bank was not liable), payable in one, two, three and four years, securing the payment thereof by a trust deed upon said property and the southeast quarter of said southwest quarter, containing forty acres additional, and that subsequently foreclosure proceedings were had upon the trust deed made by Pickett, resulting in the placing of the title to the entire tract in the name of said Ira Holmes, and the amount for which the property was sold, to 99 wit, the sum of ten thousand dollars, was credited upon the notes of said Picket, leaving due at that time upon the Pickett notes the *some* of forty thousand dollars, for the payment of which and the notes of said Ira Holmes the entire tract remained charged, said Pickett having, for the purpose of enabling the parties to carry out the arrangement referred to, executed a quitclaim deed of his interest in said property to said Ira Holmes.

I find as a matter of fact that the consideration for the conveyance of said Pickett was his release from the payment of his notes which were thereafter held under the terms of the contract between Ira Holmes and the People's Bank for the purpose of preserving the guaranty of the bank.

That said arrangement changed the original contract of guaranty made by the Manufacturers' National Bank, by the taking of the new security and the extension of time resulting therefrom upon the original indebtedness.

I find further that the deed executed by said Pickett as the result of the agreement referred to was 100 made under an arrangement between said Holmes and Pickett and assented to by said People's Bank of Belleville that said Pickett was to be released and discharged from any further liability or payment upon the original indebtedness.

By reason of which I find that the Manufacturers' National Bank, the original guarantor, became discharged from all further liability on account of such undertaking of guaranty, and recommend that the claim against it be disallowed."

And to this the appellant filed the following exceptions which the Court overruled:

In the Circuit Court of the United States for the Northern District of Illinois.

IRONS *et al.*
vs.
MANUFACTURERS' NATIONAL BANK *et al.*
In Chancery.

The exceptions taken by the assignee of the People's Bank of Belleville to the report made herein by Henry W. Bishop, Esq., one of the masters of this court, which report bears date on or about 15th day of April, A. D. 1888.

First exception. For that the said master in his said report found as a matter of fact that the consideration for the conveyance made by Pickett to Holmes was Pickett's release from the payment of his notes mentioned in said report, whereas said master should have found that said Pickett was not released from said payment by reason of anything disclosed by the evidence.

266 Second exception. For that the said master in his said report found from the evidence that Pickett was released and discharged from any further liability upon his original indebtedness mentioned in said report, whereas said master should have found that said Pickett was not so released or discharged.

Third exception. For that the said master in his said report found, as a matter of fact, that the original contract of guaranty made by the Manufacturers' National Bank, mentioned in said report, was changed by the taking of new security and an extension of time resulting therefrom, whereas he should have found that said contract of guaranty had not been affected or impaired by anything disclosed by the testimony.

Fourth exception. For that said master in his said report found, as a matter of law, that the Manufacturers' National Bank, as a guarantor of the notes mentioned in the evidence, and said report as having been guaranteed by it, was released from liability on account of its said guaranty, whereas said master should have found that said bank was not so released.

Fifth exception. For that the said master in his said report recommended that the claim of said assignee herein be disallowed, whereas said master should have recommended that said claim be allowed.

CHARLES W. THOMAS &
F. A. McCONAUGHY,
Solicitors for Assignee of the People's Bank of Belleville.

(Endorsed:) Filed June 16th, 1888. Wm. H. Bradley, clerk.

In support of this statement of the case the following abstract of the evidence and the testimony is submitted:

ABSTRACT OF THE TESTIMONY AND EVIDENCE.

Mr. C. W. Thomas speaking of these transactions
stated that he represented the People's Bank throughout;
that the indebtedness of the Manufacturers'
National Bank to the People's Bank at the time of
the agreement between him and Mr. Holmes was
about $70,000.00; that Holmes had substantially
stated the items correctly; that whatever form the
138 matter might have taken the money on all of this
paper really belonged to the Manufacturers' National
Bank. The circumstances were simply these: there
was a large sum of money to the credit of the Peoples
Bank at the Manufaturers National Bank; the Manufacturers
National Bank wished to use it and sent
this note guaranteed by Mr. Buchanan, who was
cashier, that it might be taken from the vault of the
139 Manufacturers National Bank and used. I was
attorney for the Peoples Bank; the Peoples Bank
retained the Pickett note; the Peoples Bank tried to
realize on this paper; the land was sold by myself as
141 trustee and the subsequent transactions were taken
as collateral; the property realized, my recollection
is, $31,600; I speak from memory, this is
within a few hundred dollars and left I think about
$50,000 balance; it has never been paid; I am
not able to state what was the value of the land
at that time; the sale was absolutely fair in every
respect; there were no particular encumbrances on
the property at the time of the last sale, but there
was an encumbrance that had taken away fifty acres,
thus we only had a balance of two-thirds of a quarter
section less a forty acre tract which had been taken
away by a prior encumbrance; all of it appears from

the abstract. The Peoples Bank was obliged to advance money to clear the title on the property; we advanced $11,743.13 on one Guiton note; this name is mentioned in the deed from Pickett to Holmes; on the other Mr. Holmes has a credit of so much paid of $5,503; that was the second Guiton note; there was still another encumbrance, the International Bank, which we did not pay. The Trust Deed was foreclosed and we did not consider ourselves justified to redeem; the land was unimproved; we could not realize as much out of the property as we thought we could out of the property in general. Gen. Geo. W. Smith was there personally and attended to the matter

142 for the Bank; I don't think Mr. Holmes was present. The sale only realized $9,700; we realized more than that but there was some outside property in the deed of trust which was not of this land; we realized a few dollars more than $9,000; enough to pay the difference between $9,000, which I have just stated and the expense of the sale; Mr. Holmes and I never agreed as to what the land was worth. The understanding between Mr. Holmes and myself was that the Bank was not to be released from the payment of any of these notes, being $40,000; subsequently a suit was brought in the United States Circuit Court and judgment was obtained on this theory. That suit (reported in 101 U. S. 11th Otto, 181—188) was tried in the first instance in the Federal Court in Chicago; there was adjudicated two questions, the first as to whether a National Bank had power to gurantee paper in this manner and secondly as to whether under all the circumstances the guaranty was continued. We made several journeys to Chicago at different times; I cannot state whether I came here

first before the paper was due or not; I was one of the discount committee at the time the paper was taken, the negotiations however were by letter; I knew the state of accounts between the two banks; I know as an absolute fact personally that the money, about all of which I speak was to the credit of the Peoples Bank in the Manufacturers National Bank at the time of these negotiations. I did not negotiate individually for the paper there was a good deal of business between the two banks; we had a good deal of money
147 on deposit at the time and it was lying idle; I can state generally that the arrangement was carried out
148 by written negotiations of Holmes; the title to 130 acres of land was vested in Holmes; the northwest quarter being subject to an encumbrance; I stated the encumbrance would be something over $11,000; the whole of the 160 acres was subject to the following encumbrance: A trust deed on 50⅓ acres securing two notes of John H. Bowen for $5000, dated June 9th, 1871, due in one and two years, eight per cent interest per annum, and on the balance of the quarter section there was a trust deed to secure three notes to Benjamin P Guiton, dated June 30th, 1871, for $10,700, due in one, two and three years with eight per cent interest; the bank took this land subject to these encumbrances; I should say now in round figures without making any memorandas that $15,000 was due in addition to the Bowen claim less one-third which we lost; we paid about $15,000 to clear the land; my impression is that to clear another piece of the land we paid $4,148. The International Bank foreclosed one of the $5,000 mortgage notes, this was the Bowen encumbrance; this was the east thirteen acres of the northwest quarter of the north-

west quarter; this of course we did not take into our mortgage at all; we removed the enumbrance on 150 this piece of land to secure the transaction of Holmes and by the payment of $11.000. The sale was made in the city of Chicago in accordance with the advertisement. I am unable to state who was present except that I know General George W. Smith was there who represented the bank; there were a great many people standing around that I did not know. General Smith went there with the intention of bidding in the land for the People's Bank in case sufficient sum was not bid for it; the Bank employed him; we consulted about the matter frequently; the land was bid in in the name of Frederick H. Pieper, who was president of the Bank at that time; the assignee still has the land; the total amount of the eight notes is stated; I don't think I can give the items. I don't think I can give the items making up those eighteen notes any further than they were given by Mr. Holmes; I think the items are just about the same which makes $87,000, the whole indebtedness. I think the items that make up the amount were $55,486.10, Pickett paper with interest; $10,136.11 of the Guiton paper with interest; $4,391.58 Philpot paper; $11,343 which was the encumbrance and $4148.54, which I am not certain whether it was paid or not, and which, if we did not pay, was taken no account of; the $5,000 and $3,321.60 of paper, which made $89,247.07 which we agreed upon. There was an encumbrance on the west one-third held by the International Bank; we claimed that it had been paid, but we did not get it; if it had not been why there should have been a credit as a matter of course of

$5,000 on the $87,000; this paper was taken into consideration in making a balance. The Pickett paper, and the Guiton paper and the Bowen paper is the only paper that was really secured by this encumbrance on the land; we only held a part of it however. The agreement was made to release to Pickett, to release the Bank only to have the Pickett notes, not to release to Pickett but to release the Bank; we wanted the land to bring something at the sale and we thought it would be fair for us to object to releasing any of it, but I thought he was pretty generous, and I consider he was generous, and I thought we would release two of the notes and deliver them up and so we did and then we made the Pickett sale agreeable with the transaction; we agreed to bid ten
154 thousand dollars and if anybody bid more to let the property go; of course no money passed hands in this transaction and we were to use the notes we had as a portion of the consideration. In regard to the arrangement between Mr. Holmes and myself in case Pickett should be released was because a release might have been contemplated: there was no arrangement however and the whole must be construed together; there was no arrangement ever
156 made for the release of Pickett; Pickett was never released. I know Holmes got a deed from Pickett but what their arrangements were I know not; he agreed to get the deed; I have met Pickett casually; I never spoke to him about the matter; Holmes agreed to get the conveyance and got it. He told me that Pickett was insolvent and it did not make any difference whether he made a deed or not. The agreement was expressly taken in such a way as to hold the stock-holders of the bank on a guaranty;

I wanted to avoid every doubt and took every precaution that I could; I refused to release the bank and I would rather not have entered into the arrangement than to have released the Bank; I took the precaution to see that no question could arise as to the release of the Bank and to the continuance of the guaranty; Pickett cut no figure in the transaction; Holmes always represented him as helpless and utterly and entirely insolvent, and we did not really consider him a factor in the case; I never considered that it really made any difference whether he was released or not so far as realizing from him was concerned; Holmes always said he could get a deed without any trouble from Pickett and thus put the title in Holmes; I wanted to be safe in the matter and therefore made the requirement in the contract with Holmes that he should procure the Pickett title. I think Holmes sometimes talked of releasing Pickett, but I don't remember of ever having talked with Pickett myself. I think that Holmes said he would like to have Pickett released; he remarked that Pickett was insolvent anyway and would like to have him released; I supposed he was a friend of his and would give him the deed; it was understood however all the time that we were not to release Pickett if we had to release the Bank; if we got our money out of the land we would surrender the Pickett notes
158 and all the notes. I never asked for a release of the deed of trust from Pickett; and I never authorized anybody else to do it in my behalf; it is possible that the trustee or some one else might have done it without my knowledge. Our conversation took place between Mr. Holmes and myself at the Bank in Chicago; I understood at that time that the Bank

had ceased doing business. We had some written
161 notice that the Manufacturer's National Bank had
suspended. I never knew that the Bank had gone
into liquidation until I heard of the appointment
of a receiver. Our trust deed from Mr. Holmes
included the south half and the northeast quarter
of the quarter section being 120 acres, north of
that 120 acres one-half or 53⅔ acres which would be
26⅔ acres which is included in the east 53⅔ acres;
so there were 26⅔ acres in the southwest quarter
of that quarter and the balance of that portion of the
lots was sold under the trust deed; and then we paid
the Guiton claim on that portion also; that tract contained
13⅓ acres; we released that for the benefit of
the bank but never got anything back from it. That
included the Holmes note; it was known as the
Holmes note; it was the Pickett note; we gave the
Pickett note to the bank and paid off the encumbrance
on it in order to get the balance. I append
a sketch of the land to my testimony and mark it
162 Exhibit C. The Manufacturer's National Bank had
the first lien on the west 53⅔ acres. The agreement
did not say that we were to take care of that claim;
Holmes never expected it and we never agreed it; I
never gave Holmes a check for $5000 to cover it; I
don't know that the Bank even knew of it, not that
I know of. We would have been willing to have
paid that amount but the amount was really ten
thousand dollars; we did not have the 53 acres nor
were the ten acres owned by Holmes included in the
53 acres which we had; it included the 26⅔ acres;
we paid the encumbrance on the 13⅔ acres tract
which we ought not to have paid; if we had not paid
it off and it should not have been redeemed by the

Bank then it would have been to our interest to have redeemed it; we would have redeemed it because I think we would have made something by it. The sales were made by me under the deeds of trust and were public sales and were made at the north front door of the court house in the city of Chicago; nothing was done to discourage bidders; we did not want the land we wanted the money. I consulted with General Smith as to what the land was worth; we both agreed on the price we ought to bid and we bid it; the People's Bank at that time was in great need of money; it was wavering financially; and as I have said before the Holmes notes were simply taken as collateral for the Pickett notes; there was no waiver

164 whatever upon the liability on the Pickett paper; I never knew of or authorized a release of Pickett. In reference to the map, Exhibit C. I wish to say explanatory of it that the lots marked 4 and 9 and acoss the entire diagonal in pencil are the lots on which the Peoples' Bank paid the Guiton encumbrance, which were not included in the Holmes deed of trust, and lots 13, 14, 19 and 20 of the dotted line, east of 19 and 20 and up to the red line and north of that land was the Bowen encumbrance and included in the deed of trust. I wish to be distinctly understood in stating that the Holmes notes were taken as

165 collateral on the Pickett paper. It was put in that shape that the land might be sold and whatever it did not bring recourse might be had on the other paper and on the guarantees; it was understood that the Peoples' Bank intended to hold these notes and the guarantees of the Manufacturers' National Bank and refused to surrender them; it still holds them except that they are redeemed and reduced to judgments

and they have taken additional security for it; they have taken security for the common debt which the Manufacturers' National Bank owed our Bank; there is no such thing as a Holmes debt in any of these transactions; the debt had been made long before any of it; it was a debt existing long before the notes were made and the deed of trust was made in reference to it as the means of witness to a debt already existing; and the execution of the paper by Holmes did not make the debt; the debt was existing long before and not a dollar passed; we simply gave his notes and drew legal interest.

168 Mr. Holmes called; stated that the notice had been sent out stating that the Bank had gone into liquidation on the 25th of September. Mr. Holmes went on to say:

We borrowed a large amount of money from the People's Bank of Belleville by rediscounting our paper there; among the paper were fifteen thousand dollars of Pickett, some Ray & Whitney paper and Philpot paper and some of Sam Walker paper, I think; none of it we considered very good except the Pickett paper which we considered secured; personally I was in bad shape; Pickett and I together owned 160 acres in the northwest quarter of section 13; on that there was an encumbrance of ten thousand dollars which covered the east 106 and two thirds acres, of which Pickett was to pay one half and myself one half; on the east 53⅓ acres there were two notes of James H. Bowen of $5,000, pledged to the International Bank to secure a loan to Pickett of $5,0000n which Pickett paid his one half, I have not paid mine; I told Mr. Thomas, "you have got this Pickett paper subject to the encumbrance; the Pickett note of ten thousand dollars and all the other paper I have mentioned and my individual note for $5,000 which was past due, and you take up the $15,000 encumbrance, the ten thousand on Pickett and $5,000 on myself, and we will convey you the whole property instead of the eight acres; that will make you the holder of the whole 120 acres for the Pickett paper ten thousand dollars and the $5,000 which Pickett had from the International Bank, including that. The agreement was generous as they thought and it was, and they paid off the mortgage on the 120 acres. The agreement was generous, as they thought, aed it was, and they paid off the mortgage on the 120 acres. Mr. Thomas said it was perfectly fair for the Bank to take this land, that it was as much to my interest as to theirs and every dollar that is collected will be credited on 170 the indebtedness; that is what Mr. Thomas said. I considered the land worth $1100 an acre; the People's Bank was beaten in the suit with the International Bank, the land had depreciated in value and the 26 acres had no market value above $7,200, which the International Bank got, so, of course, they let the 26 acres go. I don't know whether there was a written release from the People's Bank to Pickett or not; I cannot say; I was satisfied that Pickett was released on the contract; I supposed that settled; in my negotiations with Pickett I told him positively that he would be released; the Pickett paper was held for the purpose of collateral security to the Bank; I think Pickett is now in Pennsylvania; I say that Pickett was released.

The following conveyances were then introduced in evidence: Pickett and wife to Holmes, dated August 5th, 1873 to secure $50,000, ten notes, on the undivided half of the north west quarter of section 13, Town 37, Range 14 East, Cook County, Illinois.

A Deed of trust from J. C. Holmes to Ira Holmes, dated September 30th, 1874, for the undivided one half of the northwest quarter of Section 13, above described.

A conveyance from Pickett and wife to Holmes, dated September 1st, 1874, quit-claiming his interest to the undivided one-half of the northwest quarter of Section 13 above described.

A trust deed of Holmes and wife to Thomas, September 1st 1874, to secure \$50,000, 6⅔ acres of the northeast quarter of the northwest quarter of section 13.

18 trust deeds made by Thomas to Pieper conveying 6⅔ acres each, conveying the same land conveyed by Holmes to Thomas and purporting to be made in pursuance to powers granted in thedeed of trust of Holmes and wife to Thomas.

A deed from Pieper and wife to People's Bank of Belleville conveying to the Bank the east half of the northeast quarter of the southwest quarter of section 13, above referred to, being the same property purchased by Pieper from Thomas, Trustee, on December 29th.

177 Pickett, who was called in opposition to the claim of the People's Bank, testified that he resided in New Castle, Pennsylvania; that he resided in Chicago in 1873 and 1874; he is the party who gave the \$50,000 notes referred to and met Mr. Thomas in connection with the matter when he was representing the Bank; had some negotiations with him about the time of the panic in 1873 in regard to these notes; was willing

and made the arrangement with him to turn over the land to him in case I should be released; my land was turned over to him and made a deed to Holmes; I made a deed about the 2nd. of February, 1879; the deed was made to Holmes; either to Holmes or his wife in consideration of my release on these notes; that was the understanding between Thomas and myself; I remember that I know that there was some sort of an arrangement between Mr. Thomas and Mr. Holmes at the time I made the deed, but I do not remember the details; I don't know that I ever knew them. If I did I have forgotten; I was then striving very hard and had been for a year to get through with my debts without going into bankruptcy, but it became necessary subsequently to do so; I was struggling under a burden of obligations; I was trying very hard to arrange with my creditors; the arrangement was consumated by making this deed
181 I think perhaps Mr. Thomas and myself had some correspondence.

On cross-examination he said that he came to Chicago to testify in this case at the request of Mr. Heard, one of the counsel; he had some correspondence; I have not the letters with me nor can I produce them to-day; I will have them send the
182 letters; I left them at my office. Mr. Holmes had written me to come here but I had not received it; it was sent in care of an old partner of mine in the east; a copy of the letter was enclosed, a marked copy; in this letter Mr. Holmes asked me to give all the information I could in regard to this tract of land; he wanted my testimony in regard to it; that is the substance I think of that letter; I think I wrote him I did not remember having any papers; I told

him I would look up the papers; I did not remember then whether I had any or not; that I would come to Chicago at their expense for that purpose at any time upon reasonable notice, a few days; that was the substance of my answer. A short time ago I received a letter from Mr. Heard, who had the time fixed and requested me to come at that time and I replied that I would come on this day; that was the substance of our correspondence; I no doubt can lay my hand on
183 these letters; I will send on for them. I think Mr. Heard said in his letter that he was attorney for some of the stockholders and wanted to prove by me what the arrangement was with Mr. Thomas in regard to
184 my notes; my expenses are paid; that is all I asked him to do; I have had a talk with Mr. Hutchinson since I have been here but not with Mr. Holmes; I have not seen him; I resided in Chicago in 1873, 1874 and 1875; Mr. Thomas resided in Belleville; I am not able to give the dates of any of my interviews with Mr. Thomas; I don't think I have any letters; I have no release of any kind in writing on those notes, that I know of; I don't remember that one was ever given; my best recollection is that there never was any written release given to me; I am not able to say why the notes were not surrendered; I am a business man and of course think the notes ought to have been surrendered but for intervening circumstances; I wanted to be released from the obligation of course and my recollection is that there was some understanding between Mr. Thomas and Mr. Holmes by which these notes were to be retained by
186 Mr. Thomas, as the representative of the Belleville Bank. I suppose I had some satisfactory evidence

of my release at the time; my best recollection is
that I was released in the transaction.

Mr. Holmes and Hutchison were present in the
transaction; Mr. Hutchison was the representative
of Mr. Holmes, his legal representative; I think that
the transaction was finally closed at Mr. Holmes'
residence on 39th Street and Michigan Avenue; that
is my best recollection. I am not able to give you
the date, but I think it was in 1874; the date of the
deed is 1874, but the transaction took place earlier,
but that is about the time and before I went into
187 bankruptcy; the transaction was verbal; I don't
know that I have any papers to show a release. I am
inclined to think I had none; I have not thought of
that transaction in ten years; I understood that I
was to be released; that is now thirteen years ago;
I had no occasion in the intervening time to refresh
188 my recollection on this matter. If I made a sworn
statement in reference to this matter in 1875 my recollection
ought to have been better at that time than
now. I think it natural that I should have known
more about the details in 1875 and 1877 than now.

I have been in bankruptcy twice; the first time in
1874, that was the first time, and then in 1878 and
1879; I think in 1878. I think the bankrupt law
went out of existence in 1878; that was the year; my
affairs and those of Mr. Holmes were considerably
189 mixed and intermingled at that time. I suppose I
went through the formal bankruptcy and swore to
a schedule before Mr. Hibbard the Register in bankruptcy
on the first of April, 1875; I don't remember
exactly, but I think that is my signature to
198 the schedule sworn to. I never had any other transactions
with Mr. Thomas or this Belleville Bank that

I recollect of in regard to these notes. The notes mentioned in the schedule as belonging to C. W. Thomas, Attorney, amounting to $40,000, &c., are the notes; the transactions that I stated were finally consumated at Mr. Holmes' house; I think Mr. Thomas was present; and Mr. Holmes and Mr. Hutchinson; I have no distinct recollection about either Smith or Mr. Thomas being there, but I have no doubt it is about as stated; I mean the transactions in regard to the notes. 190

191 A certified copy of the oath and the signature of Mr. Pickett thereto is introduced.

When swearing to the schedule I stated the amount at $40,000 instead of $50,000 because a mortgage had been foreclosed and bought in, I believe, for $10,000; I was greatly embarrassed at that time, trying to get along. Acting upon the advice of Mr. Bisblee of the firm of Monroe, Bisblee and Ball, who was acting for me in this connection, the only way to get out of the difficulty was to go
192 into bankruptcy; he suggested that finally; it was an involuntary proceeding; I knew at that time that the papers had not been surrendered and I suppose that he returned them as an outstanding debt; however, whether they were returned that way or not by an agreement between Mr. Thomas and myself I was to be released. I had forgotten about the mortgage being foreclosed until I saw the balance due. I think Albert Holmes was the trustee and he advertised and sold the property under the mortgage; I made out the list of my creditors; that list is in the handwriting of my book-keeper; I am not able to state why I swore to them as outstanding liabilities;

it was I suppose on account that the notes were still out.

On page 193 will be found the oath of Mr. Pickett to the schedule.

On page 194 to 201 appears the schedule which was above referred to, aggregating nearly $300,000, this claim being stated on page 200 as follows: "C. W. Thomas, Attorney, Belleville, $40,000, contracted August 5th, 1873," and a memorandum on the margin, "balance of $50,000 and interest secured by trust deed which has been foreclosed, endorsed by Manufacturers' National Bank, eight notes of $5,000 each."

On page 203 is the agreement above stated in regard to this indebtedness and the transactions in relation to it, signed by the Manufacturers' National Bank by Ira Holmes, its president, agreeing to in behalf of the Bank in view of the transactions that the guaranty of the Manufacturers' National Bank on these notes should remain binding on the Manufaturers' National Bank notwithstanding any of its transactions.

On page 205 is another agreement of the Bank dated September, 1874, signed by Bank by Holmes in which it is also agreed that none of these transactions shall in any way affect the guaranty of the Manufacturers' National Bank with the People's Bank except to carry them out.

Between pages 206 and 207 is the plat giving the lands which were referred to in the testimony of Mr. Thomas.

On page 207 is found the agreement between Mr. Holmes and Mr. Thomas on behalf of the People's Bank.

Page 214 the deed from Pickett and wife to Holmes to secure the notes, made to Holmes, Trustee of the Manufacturers' National Bank.

Here follows the files in the suit of the People's Bank of Belleville against the Manufacturers' National Bank, in which the People's Bank of Belleville obtained a judgment against the Manufacturers' National Bank on this paper. This is the case which was referred to above as having been appealed, the People's Bank of Belleville having lost the case in the United States Circuit Court, and appealed to this court, and is the case above referred to; that is pages 224 to 251.

On page 256 is the order of court denying judgment in that suit of the People's Bank, and the certificate of the judges to the facts submitted in the case and the appeal bond in that suit, and the mandate that the case be sent back to the United States Circuit Court by Judge Blodgett, reversing his judgment and directing him to enter judgment for plaintiff with costs; and the orders of court made upon the mandate in accordance with its provisions.

The finding of the master in chancery on this claim is in substance: "I find as a matter of fact that the consideration for the conveyance of said Pickett was the release from the payment of the notes, and further under the terms of the contract between Ira Holmes and the People's Bank for the purpose of giving surety to the Bank; that said judgment changed the original matter of controversy between the People's Bank and the Manufacturers' National Bank by giving an extension of time. I find further that the deed by Picket was under an arrangement between Pickett and Holmes and assented to by the said Bank of Belleville that said Picket was to be released and discharged from further liability ont his particular indebtedness by reason of it. I find that the Manufacturers' National Bank has become discharged from any further liability on account of such understanding or agreement and the claim ought to be allowed."

On page 265 are the exceptions taken to this report; the exceptions are that the master finds in his report as a matter of fact that the consideration for the conveyance of Pickett to Holmes was the release from the payment of these notes mentioned in the said report and that said master should have found that said Pickett was not released from the payment of said notes by reason of the conveyance by him to Holmes by anything disclosed in the evidence; the second exception was that the master in his report found from the evidence that Pickett was released and discharged from any further liability on the original indebtedness mentioned in said report, whereas the master should have found that said Pickett was not so released and discharged. Another exception was that the master found in his report as a matter of fact that the original contract of the Manufacturers' National Bank was changed by the taking of new security, whereas the master should have found that said contract was not changed by anything disclosed by the evidence, and the further exception that the master's report found as a matter of law that the Manufacturers' National Bank as guarantor of the notes mentioned in the evidence, in said report mentioned as having been guaranteed by it was released from liability, whereas the master should have found that the Bank was not so released, and the fifth exception that the master in his report recommended that the claim of said assignee be disallowed, whereas he should have recommended that the claim be allowed.

Exceptions were also filed to the report by other creditors and ask that the report be overruled.

On page 272 is the order of court denying or overruling the exceptions to the master's report, being an opinion by Judge Blodgett, December 3d, 1888, in which the exceptions to the report of the master in chancery above pointed out made by the People's Bank were overruled; and the final decree in the case in denying the claim of the People's Bank is on pages 278, 279, 280 and 281. On pages 285 and 286 is the suggestion on the record made by the counsel for the People's Bank suggesting the removal of Joseph Penn, assignee of the People's Bank, and the appointment of his successor Sebastian Fietsam. Then follows on pages 288 and 289 stipulations for the purpose of shortening the record signed by counsel in the case, by which this record was made out, and the appeal bond on the perfecting of the appeal to this court under the certificate of the clerk.

ARGUMENT AND BRIEF.

In the argument of this case in the Court below, the opposing counsel have treated the undertaking of the Manufacturers National Bank, as though it was merely that of a surety or accommodation endorser, whereas it was much more in the nature of the obligation of a principal. The Manufacturers National Bank wanted money, and as the correspondent of the Peoples Bank; had a large balance in its vaults due to that Bank, it took the money and it turned this paper over in its place with its guaranty. In a case cited by opposing counsel in the trial Court, (*Kirkpatrick vs. Howk*, 80 Ill., 122), Kirkpatrick was only an accommodation surety, and participated in no way in the money raised on the paper, and the Court said in that case, that the parties "must have known, from the circumstances, that Kirkpatrick was only a surety on the note." This distinction will apply doubtless to all the cases cited.

As in the case of *Hays vs. Ward*, 4 John Ch., 130, referred to by counsel, a mere dictum is relied upon to support the position, and while the dictum states a doctrine which no one will dispute, the facts in that case widely differ from those in this; there was an attempt to hold an accommodation endorser to whom no consideration whatever moved. In this case we are trying to hold the party to the payment of this money who actually received it, as to this there can be no possible dispute. The Court in fact says, after enunciating this doctrine: "But the application of these principles is not necessarily the question at present. If the defendant W. should be required to prosecute previously upon his mortgage, and he should be defeated in that remedy, by the invalidity of the mortgage, arising from his own illegal act, and should then recur back to the plaintiff, it would be time to examine whether the case fell within the range of the doctrine to which I have referred. The only point now to be settled is whether the defendant W. shall be stayed in his suit at law, until he has tried his remedy against the mortgaged premises."

The principal which gives the surety the benefit of the real estate security, is not questioned, but this is not such a case, even if it could be shown that the most possible, has not been made out of the real estate, which it can not. No assessment which can be made, in this case, will more than pay a small percentage of this claim, and there never was a time, in the history of these transactions, from their beginning to their end, when, by any action, no matter how promptly taken, or ingeniously devised, the plaintiff Bank could have obtained its money from the defendant Bank. When this paper defaulted, the Peoples Bank needed money very badly itself. In fact it was largely due to its non-payment, that it became insolvent, and was obliged to make an assignment, at great loss to its creditors. The guarantor has no right to demand the sureties which the creditor may hold until he has paid in full, and discharged his undertaking, which is, to pay at maturity.

Darst vs Bates, 51 Ill., 439.

Besides all this, it appears from the record, that the Peoples Bank still has all this property, and if the Manufacturers National Bank, or any of its stockholders, want it, why do they not step forward, pay the amount due, and take it. All that we ask, who represent the creditors of the Peoples Bank, is the money which the other Bank received from it, and the interest. This would certainly be an easy solution if, it is thought we have been wrong. The property has not flown away, or been wasted, and of course is much more valuable now, than it was then. There has been nothing lost; and if it is thought that we secured the property too cheap, here is indeed, an opportunity, to set it right, and make a speculation. Here is the chance for subrogation, the loss of which causes such bitter complaint, and such loud denunciation.

It is not believed that the agreement between Thomas, representing the plaintiff Bank, and Holmes, was so utterly immoral, as to justify the raving, which it seems to have provoked.

Here was a tract of land, partly owned by Pickett, and partly owned by Holmes; it was tangled up by diverse interests, much incumbered, and of an entirely speculative value. This agreement, as far as it concerns the Manufacturers National Bank, and its stockholders, simply provides that the Peoples Bank should foreclose its incumbrances, and in case sufficient should not be realized to pay its claim, then a new arrangement should be made for the balance, other incumbrances paid off, and questionable claims, of certain parties, to interest therein, contested. This is a full and accurate statement of what was provided. (See Record p. 105).

There is no pretense that there was the slightest irregularity in the foreclosure sale, under which the Bank acquired the Pickett title. In this proceeding, the Peoples Bank was represented, by Gen. George W. Smith, who has the reputation of being a very honorable gentlemen. It was duly advertised, and took place in accordance with the published terms. It was to the interest of the Peoples Bank, to have the property bring as much as possible, and it is very evident, that no bid would have been made in its behalf, had the property brought the amount of its claim, or any sum near it. All the publicity which the law requires was given to the sale, and no attempt made to deter bidders. True, the creditor Bank anticipated that this sale, like most other trustees' sales at that time, would attract no outside bidders, and that the Bank itself, must furnish a purchaser. This, in accordance with a perfect right, the Bank did. When under the laws of this State, (Illinois), foreclosures were not required to be made by judicial proceedings, the great advantage of a sale by trustee, over a mortgagee's sale, was, that in the former case the creditor could not purchase, while in the latter, the sale being made by a trustee, he could. The arrangement with Holmes was only made against the contingency, that there should be no other person willing to buy the property. To pass money, would have been a very idle performance, as it would have been handed back immediately, and the amount credited on the Pickett paper, which was done. We repeat there was not the slightest taint of unfairness in the sale, and all suspicion of the counsel to the contrary, find no foundation or warrant in this record.

The record in this case does not show a release of Pickett, but if even it did, it would not help the defense in this case. The Section of the National Bank act under which the stockholders are charged in this case reads as follows:

"Section 5151. The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares: except that the shareholders of any banking association now existing under State laws, having not less than five millions of dollars of capital actually paid in, and a surplus of twenty per centum on hands, both to be determined by the Comptroller of the Currency shall be liable only to the amount invested in their shares; and such surplus of twenty per centum shall be kept undiminished, and be in addition to the surplus provided for in this Title; and if at any time there is a deficiency in such surplus of twenty per centum, such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency, the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of Chapter four of this Title."

This claim is now in the form of a judgment against the Manufacturers' National Bank, the most solemn form of an obligation known to the law.

The weight of the evidence in the case, is to the effect that Pickett, was not released. There is no pretense that a written release was ever given him. It is true he claims to have thought he was to be released, but he swore in his Bankruptcy Schedule, (Record p. 106) that he was not. Holmes also swears he was released, but he had, at the time when he claims the release was made, solemnly contracted that Pickett should not be released. This certainly deprives his testimony of any weight whatever. (see contract Record p. 61). Thomas swears there was to be no release, the notes were never surrendered, all the circumstances go to show there was no release.

It is believed that on the case made, no Court, were a suit pending against Pickett now, on these notes, would let him off on such a showing of a release.

But would a release of Pickett in this case help the stockholders? It is not thought that it would. The contract which it is claimed operates as a release reads as follows:

> "And it is further understood and agreed between the parties hereto, that the notes mentioned in the incumberances now existing upon said land, shall stand as additional security for said People's Bank, as far as they go. * * * * * and it is further understood and agreed, by and between the parties hereto, that any money which may be paid to said People's Bank, upon any of the notes which are to be stated as such additional security as aforesaid, shall be credited, &c."

In the case of *Miller, Exr., &c., vs. Dobschuetz*, 89 Ill., 182, the Court said "that an agreement which preserves the rights of the creditor to proceed against the surety, or the right of the surety to proceed against the principal, will not discharge the surety."

In this more modern and reasonable rule, the Supreme Court of this State, (Illinois), is supported by the best of authority, both English and American.

Rucker vs. Robinson, 38 Mo. 154;
Morse vs. Huntington, 40 Vt., 488–496;
Price vs. Barker, 4 Ellis & Blackburn, 760, (82 Eng. Com. Law, 760);

Kearsley vs. Cole, 16 Meeson and Welsby, 128;
Vieley vs. Hoag, 24 Vt., 46;
Hubbell vs. Carpenter, 1 Selden, 171.

It is claimed that the real estate, securing the Pickett paper, was worth an enormous sum of money. If this were true, why do the parties not come forward and take it, and pay off this claim. The record shows it has not been disposed of. This has been suggested above. The testimony of Holmes as to its value, is based, as he himself says, on what he paid for a part of the tract, yet he is compelled to admit that its value is entirely speculative, and what he paid, he paid by releasing claims against persons, who were hopelessly insolvent. The sale was a fair test of its value, and would have been, no matter what the conduct of the representatives of the Peoples Bank, might have been. Will any one believe, that when Pickett, who seems to have gone through bankruptcy more than once, was overwhelmed by the $300,000 of indebtedness which he scheduled, with no other assets, all of the long list of large creditors, would have stood idly by, and allowed such valuable property to be sacrificed, when by this, and no other means, they could have saved themselves. It is thought not.

While the mere inadequacy of price, would not be sufficient to set aside such a sale, even in a direct proceeding for such a purpose, (see *Davis vs. Pickett*, 72 Ill., 485, and cases cited), still if there were any grounds for the suspicions of wrong doing, it might have been set aside, upon such additional grounds. It is not, however, thought reasonable to suppose, that the counsel of the Peoples Bank, would have incurred such a risk, by bidding in the property at a figure, much below its then market value, especially, as it must have occurred to them that the property, and its title, must be their chief reliance, in view of the insolvency of the parties.

This claim is required to be made upon the original, and only guarranty of the Bank, before it went into voluntary liquidation, hence, what this Court said in *Richmond vs. Irons*, 121 U. S., R. p 60, has no application here, the arrangement was afterward made with Holmes for the sole and express purpose of saving the real estate.

It will be seen, on a glance at the record, that everything which will be urged in the argument against this claim, had transpired long before judgment was rendered against the Manufacturers' National Bank, on this very guarranty; this guarranty was then in precisely the same condition in which we find it to-day, the arrangement, between Thomas and Holmes, had been entered into long before, had been carried out, and the land sold. This was all known at the time of the suit against the Manufacturers' National Bank, and as a matter of fact these transactions were used, or could have been, as a defense then, and held to be wholly insufficient, to defeat a recovery. (See 101, U. S. R. 181).

This judgment is as binding on the stockholders of the Bank, as an adjudication, as it is against the Bank itself, unless it can be shown that it was obtained by fraud, of which there can be no pretense.

Milliken vs. Whitehouse, 49 Me., 529;
Slee vs. Bloom, 20 Johns, 669;
Moss vs. Oakly, 2 Hill, 265;
Belmont vs. Coleman, 1 Bosw., 188;

Donworth vs. Coolbaugh, 5 Iowa, 300;
Wilson vs. Pittsburgh, etc., 43 Pa., 434;
Grund vs. Tucker, 5 Kan., 70.

In Thompson's Liability of Stockholders Sec. 329, many authorities are cited in support of this doctrine, and in fact, with the exception of New York, they seem to be uniform.

Such cases as this must always involve some hardship, but it is simply a question as to whether the stockholders of the defendant Bank shall pay, or the creditors of the plaintiff, which is being wound up for its creditors, shall loose. It is believed that upon the law and the facts, as well as in morals, the stockholders should be held liable for this claim, and that the decree of the Court below, in overruling the exceptions to the Report of the Master in Chancery, as to this claim, should be reversed with directions.

FRANKLIN A. McCONAUGHY,
for the Appellant.

Supreme Court U. S.
FILED.
NOV 22 1889
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1889.

SEBASTIAN FIETSAN, Assignee of Peoples Bank of Belleville,
Appellant,
vs.
MANUFACTURERS NATIONAL BANK OF CHICAGO, et al.,
ppellees.

BRIEF FOR APPELLEES.

HENRY G. MILLER,
ATTORNEY FOR STOCKHOLDERS.

BARNARD & GUNTHROP PRINT, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1889.

SEBASTIAN FIETSAN, Assignee of Peoples Bank
of Belleville,
Appellant,
vs.
MANUFACTURERS NATIONAL BANK OF
CHICAGO et al.,
Appellees.

BRIEF FOR APPELLEES.

MAY IT PLEASE YOUR HONORS:

The Manufacturers National Bank of Chicago, organized under the national banking act, suspended payment and went into voluntary liquidation, under the provisions of that act, September 23, 1873. James Irons, February 3, 1875, filed a creditors' bill against the bank and Ira Holmes, its president, in the United States Circuit court for the Northern district of Illinois, to reach the assets of the bank and have them appropriated to the payment of a judgment he had recovered against the bank for $12,408.51. Subsequently other creditors came in, and were allowed to join as co-complainants in the bill. October 5, 1876, the bill was amended, the stockholders were made parties defendant, served with process and appeared. By this amendment the scope of the bill was enlarged so as to include all the creditors of the bank, and it thereby became a proceeding to liquidate the affairs of the bank by compelling the stockholders to pay their individual liability under the statute as stockholders, and thus, as the assets of the bank were insufficient for that purpose, furnish a fund for the payment of all the debts of the bank. On the 23d of July, 1883 (page 22 of printed record), the case was referred to H. W. Bishop, master in chancery, to take proof and report:

First. The amount of the debts of the bank still unpaid, and the amount due each creditor thereon.

Second. The value of the assets, if any, of the bank.

Third. The amount of the assessment necessary to be made on each share of the capital stock of the bank in order to fully pay the indebtedness of the bank, and also report the amount due and payable from each share upon such assessment. On the 6th of January, 1885 (page 26 of the record), the master reported his findings under the order of reference, in which he classified the claims against the bank as follows:

Class "A," embracing clerical services and amounting to.........................$	183.31
Class "B," embracing the services of the receiver and his attorneys, amounting to ...	4,437.04
Class "C," embracing claims arising before the failure of the bank, and upon which no collaterals were taken, amounting to.....	179,234.81
Class "D," embracing claims arising before the failure of the bank, "and upon which "worthless collaterals were subsequently "received," amounting to..............	185,119.34

Exceptions to the report were overruled, the report was confirmed and a final decree was entered against the defendant stockholders according to this finding. From this decree the defendant stockholders took the case by appeal to the Supreme court. The case (*Richmond* v. *Irons*) is reported in 121 U. S. Reports, 124. The Supreme court decided that class "D" of claims against the bank, aggregating $185,119.34 (designated by the master "as "claims arising before the failure of the bank, and upon "which worthless collaterals were subsequently received") were, after the bank went into liquidation, settled between the parties by the creditors accepting bills receivable out of the assets of the bank in payment of their claims, and that the indorsement and guarantees made in the name of the bank upon these bills receivable by its liquidating officers, after the bank went into liquidation, did not bind its stockholders, and that all the claims enumerated in class "D," in the master's report, should have been excluded from the benefit of the decree. The court holding that the stockholders of the bank were only bound for the debts of the bank *as they existed at the time it was placed in liquidation*, saying, page 60, "The individual "liability of the stockholders as imposed by and expressed "in the statute is indeed, for all the contracts, debts, engagements of such association, but that must be restricted in its meaning to such contracts, debts and en"gagements as have been duly contracted in the ordinary "course of its business. The business ceased when the "bank went into liquidation; after that there was no "authority on the part of the officers of the bank to "transact any business in the name of the bank so as to "bind its shareholders, except that which is implied in the "duty of liquidation, unless such authority had been en-

"pressly conferred by the shareholders. No such express authority appears in this case. The power of "the president or other officer of the bank of binding "it by transactions after it was put into liquidation, "is that which results by implication from the duty "to wind up and close its affairs. That duty consists in the collection and reduction to money of the "assets of the bank, and the payment of creditors equally "and ratably, so far as the assets prove sufficient." The Supreme court reversed the decree of the Circuit court, and remanded the cause with instructions "to proceed "therein as justice and equity may require in conformity "with this opinion." On the 16th of January, 1887 (p. 38), one of the solicitors filed in behalf of the defendant stockholders his affidavit in the Circuit court, stating that as he verily believed the defendant stockholders had a defense to the claim of the People's Bank of Belleville, based upon the following fact: That said claim was upon eight promissory notes of $5,000 each, dated August 5, 1873, payable one year after date, made by Henry E. Pickett, and guaranteed by the Manufacturers National Bank; that the payment of said notes was secured by a trust deed of Henry E. Pickett and wife to Joseph A. Holmes, trustee, of the undivided half of the north-west quarter of section ten in Cook county, and that after said notes became due, to wit: on or about the 27th of August, 1874, an agrement was entered into by and between Ira Holmes and said Peoples Bank, wherein Ira Holmes agreed to execute and deliver to said Peoples Bank on the first day of September, 1874, his eighteen promissory notes aggregating $87,465.10, payable, some in one year, some in two years, some in three years and some in four years from that date, bearing interest at the rate of ten per cent. per annum, and to secure the payment of said notes, to execute and deliver to said Peoples Bank his eighteen trust deeds (each covering six and two-thirds acres), upon the east half, and the south-west quarter of said north-west quarter of said section 10; that the said Pickett notes constituted to the extent of their face value a portion of said sum of $87,465.10; the said Peoples Bank agreed to at once foreclose said Pickett trust deed, and cause the same to be brought in and conveyed to said Holmes, and said Holmes agreed to acquire the fee simple title to the whole of the land, to be conveyed by him as security for his eighteen notes; that at this time the said Holmes was the owner in fee of the undivided half of said quarter section, and in fullfillment of said agreement he purchased the other undivided half thereof from the said Henry E. Pickett, for the sum of $88,000. Said Pickett thereupon, and or about the 1st of September, 1874, conveyed his undivided half of said quarter section to said Holmes by deed bearing date on that day; that in pursuance of said agreement said Joseph A. Holmes, under and in pursuance of the power in said Pickett trust deed, sold the premises described in the said trust deed to Ira Holmes, and conveyed the same to him by his trustee's deed bearing date September 30, 1878; and that said Holmes fully carried out the terms of said agreement on his part by executing his eighteen promissory notes and his trust deeds of six and two-thirds acres each, and embracing the east half of said quarter section, and the south-west quarter of the north-west quarter thereof, being forty acres in addition, or 120 acres in all; and that affiant first became acquainted with said facts about five weeks prior to the making and filing of said affidavit. The written agreement referred to is annexed thereto, and is on pages 40, 41 and 42. It is provided in the agreement, page 42, that the Pickett notes shall stand as additional security for the Peoples Bank, as far as they go, for the indebtedness to be created by the said Holmes. That is, for the said sum of $87,465.10 for which his eighteen notes were to be given, and that any money which might be paid to the Peoples Bank upon said Pickett notes should be credited by the Peoples Bank upon the said eighteen notes of said Holmes, pro rata. June 20, 1887, the case was redocketed and referred to the master (page 43), to report in conformity with the decision of the Supreme court entered herein, upon the evidence already taken, the amount of the debts of the bank still unpaid, the amount due each creditor, the amount of assessment necessary to be made on each share of the capital stock of the bank, and the amount due and payable from each shareholder upon said assessment; and in addition, that he hear further proofs in regard to the validity of the claim of the Peoples Bank as against the stockholders of the Manufacturers National Bank, and whether such claim has been in whole or in part released, discharged or defeated by reason of the new matters stated in the affidavit filed on the 16th of June, instant, and that he report such additional proofs and his findings thereon.

The master made his report under this order of reference with the proofs he had taken. In respect to the claim of the Peoples Bank of Bellville, (page 45) he found that it was based upon ten notes for $5,000 each, made by Henry E. Pickett, and guaranteed by the Manufacturers National bank before the failure of the bank. That these notes were secured by a trust deed to Joseph A. Holmes, upon the undivided one-half of the northwest quarter of section 10, township 37, in Cook county, one undivided one-half of which said quarter section was then owned by said Pickett, and the other undivided one-half by said Holmes; that after the maturity of said notes and in the month of August, 1874, said Holmes made a written agreement with the Peoples Bank by which he was to give and did give the bank his promissory notes aggregating the sum of $87,465 to secure the Pickett notes and other indebtedness for which the bank was liable, payable in one, two, three and four years, securing the payment thereof by a trust deed on said property and the south-east quarter of the south-west quarter, containing forty acres additional, and that foreclosure proceedings were had upon the trust deed made by Pickett, resulting in the placing of the title to the entire tract in the name of said Holmes, and the amount for which the property was sold, to wit: the sum of $10,000 was credited upon the notes of said Pickett, leaving due at that time upon the said Pickett notes the sum of $40,000, for the payment of which, and the notes of said Ira Holmes the entire tract remained charged, and said Pickett, having for the purpose of enabling the parties to carry out the agreement referred to, executed a quit claim deed of his interest in said property to said Holmes. And the master found, as a matter of fact, that the consideration for the conveyance of said Pickett to said Holmes was his release from the payment of his notes which were, then held under the terms of the contract between Ira Holmes and the Peoples Bank, for the purpose of preserving the guarantee of the bank; that said arrangement changed the original contract of guaranty made by the Manufacturers National Bank, by the taking of new security and the extension of time resulting therefrom upon the original indebtedness: that the deed executed by said Pickett as a result of the agreement referred to was made under the arrangement between said Holmes and Pickett and assented to by said Peoples Bank of Belleville: that said Pickett was to be released and discharged from any further liability of payment upon the original indebtedness by reason of which the Manufacturers National Bank, the guarantor of said Pickett notes became discharged from further liability for or on account of said guaranty, and recommended that the claim against it be discharged. December 3, 1887. (Page 137.)

Exceptions to master's report were overruled and report confirmed. Final decree. (Page 139.)

Appeal to the Supreme court by Sebastian Fietsan, successor to Joseph Penn, assignee of Peoples Bank, intervening petitioner. (Page 143.)

ARGUMENT.

The only question raised by this record is, "did the "Circuit court err in rejecting or excluding from the "benefit of its decree the claim of the intervening petitioner, the Peoples Bank of Belleville, amounting to "$74,800?" It cannot be successfully contended that the Circuit court erred in allowing a defense to be made to this claim after the case came down from the Supreme court, for it was directed by the mandate to proceed in respect to all the claims against the stockholders "as "justice and equity may require in conformity with this "opinion," and it was not known to the stockholders until after the case came down from the Supreme court, that there was any defense to this claim. It is true that on the 31st of May, 1880, (page 134) the Peoples Bank of Belleville recovered a judgment in the Circuit court against the Manufacturers National Bank for. $67,277.77 in an action commenced against it (page 113) as guarantor of the notes which are the basis of the claim, and it will probably be contended that the stockholders cannot now dispute the claim. In the Irons case, 121 U. S. Rep., a large majority of the claims in class D were based upon judgments against the bank as guarantor of commercial paper taken in settlement by creditors of the bank after it went into liquidation, and it was in that case contended that the stockholders of the bank were concluded by these judgments, but the claims were excluded. A judgment against a corporation is not binding upon the stockholders; it is not even *prima facie* evidence of the indebtedness of the corporation as to them. They are never parties or privies to it. Whether they are considered as sureties for the company, or as principal debtors, the rule is the same.

Moss v. *McCollough*, 5 Hill., 131.
McMahon v. *Macy*, 51 New York, 155.
Miller v. *White*, 50 New York, 137.
Laidley v. *Kline*, 8 W. Va., 218.
Trippe v. *Huncheon*, 82 Ind., 307.

And upon this subject the learned judge of the Circuit court says in his opinion, page 138: "It is argued, however, that as the proof shows that the Peoples Bank of "Belleville brought suit on this guaranty now in question, "and obtained judgment thereon; that such judgment is "conclusive against the defendants in this case, who are "stockholders in the Manufacturers National Bank against "whom the assessment is asked. Aside from the authorities stated, which satisfy me that the stockholders of the "Manufacturers National Bank are not concluded by this "judgment which was rendered after the bank went into "liquidation, I think the facts shown in this record, that "the contract between the Peoples Bank of Belleville and "Holmes and Pickett, by which Pickett was released, "were unknwn to the defendant stockholders at the time "this judgment was rendered should allow these stockholders to go behind the record of that judgment and "raise the question before the court in this suit whether "the guarantee was released by the lease of Pickett, the "principal, whose notes were guaranteed."

When the Manufacturers National Bank went into liquidation, September 23, 1873, it was guarantor of ten promissory notes of $5,000 each, dated August 5, 1873, made by Henry E. Pickett, payable one year after date, held by the Peoples Bank of Bellville, and secured by a trust deed executed by Henry E. Pickett and wife, to Joseph A. Holmes (page 108), of the undivided half of the north-west quarter of section 10, township 37 north, range 14, east of the third principal meridian, and other property, in the county of Cook. The undivided one-half of the quarter section was at that time worth $1,100 per acre, in all $88,000 (page 54), much more than sufficient to pay these notes. This north-west quarter of section 10 was then owned by Henry E. Pickett and Ira Holmes, and on the 27th day of August, 1874, some days after the maturity of the notes, and while the Manufacturers Bank was in liquidation, it was agreed between Ira Holmes and the Peoples Bank that Holmes should acquire the fee simple title to this quarter section, and execute a trust deed upon the east half of it with forty acres in addition, to Charles W. Thomas, to secure his eighteen promissory notes, aggregating $87,465.10 (made up of Pickett's notes, $50,000 and interest, and other paper held by the Peoples Bank page, 55--77), and payable in one, two, three and four years after date, and that to place this title in Holmes so as to enable him to give this security, he was to acquire the title of Pickett, and the Peoples Bank were to cause the trust deed which Pickett had given to Joseph A. Holmes to be foreclosed under the power contained in the deed, and the property at the sale bid in for and conveyed to Ira Holmes. That the Pickett notes should be retained by the Peoples Bank so as to continue in force the guaranty of the Manufacturers National Bank and as collateral security for the eighteen promissory notes of Holmes, and that whatever should be received from the Manufacturers National Bank or its stockholders upon this guaranty should be credited to

Holmes upon his eighteen notes. As the sale under the Pickett trust deed, contemplated and provided for by the agreement, was not for the purpose of realizing the full value of the property, but simply to place the title thereto in Holmes, it was necessary, in addition to the foreclosure, that there should be a quitclaim deed from Pickett. Holmes obtained this deed from Pickett, dated September 1, 1874, recorded September 3, 1874, and gave the eighteen notes secured by the eighteen trust deeds, as provided in said contract. (Page 88.) The consideration for the quit-claim deed from Pickett to Ira Holmes was that he should be released as maker of the notes held by the Peoples Bank which had been guaranteed by the Manufacturers National Bank.

Mr. Holmes says, in his direct examination (page 54), that he paid Pickett $88,000 for his undivided half of the quarter section. That this was made up in part of the ten Pickett notes for $5,000 each, in all $50,000. In his examination (page 87) he says:

Q. In your arrangement with Mr. Pickett I want you to state whether Pickett was to be released or not?

A. Positively and unequivocally.

Q. Did you communicate that to Mr. Thomas? (Mr. Thomas represented the Belleville bank in this arrangement.)

A. They understood that thoroughly. They were not to pursue Pickett in any way, shape, manner or form. They knew perfectly well the $50,000 was a part of the consideration for which I was to get the deed from Pickett.

Q. Was that so talked?

A. Yes. So talked and so understood. The paper was simply held for the purpose of holding the guaranty of the bank.

Mr. Pickett says (page 89) that he knew C. W. Thomas in the fall of 1874 as agent and attorney of the Peoples Bank of Belleville with regard to these notes: "I had a great many interviews and a great deal of "negotiation with Mr. Thomas in regard to these notes "between the time of what was known as 'the panic of "'73' and some time in 1874, with a view to the payment or cancellation or discharge of these notes, and "did finally make an arrangement with him to turn over "to him the land on which these notes were secured in "consideration of being released from any further payment. Just what date that occurred I could not tell "you, some time in 1874."

Q. Was the land turned over in that way?

A. Yes. "The deed was in consideration of my "exemption or release from the payment of these notes; "that is, I made the deed about that time or some time "that year. That deed was made at the request of Mr. "Thomas or the Bank of Belleville, and was in consideration of my exemption from the payment of these "notes."

Q. Was that the understanding between you and Mr. Thomas?

A. Yes.

Q. He acting in behalf of the bank?

A. Yes. * * * I was striving very hard and had been for a year to get through with my difficulties without going into bankruptcy; did not want to go in, but found it was necessary subsequently to do so. I was struggling under a load of obligations and debts; it was pretty hard to take care of it at that time. I was very anxious to get this transaction made with Thomas; had been negotiating with him for a long time; a good many months. Had been talking about it a great many times, and I think we had some correspondence. I was there frequently and saw him a great many times about it. I was very anxious to make that arrangement; was trying to make that arrangement with other creditors, or make some arrangement. I was striving very hard to get that arrangement with him, and was very anxious to get it done.

Q. And that was consummated by making this deal, was it?

A. Yes, sir.

Thomas, who testified in behalf of the bank of Belleville, says (page 30:) "There was something said about "releasing Pickett several times, but I do not remember "having talked with Pickett."

Q. What did he say?

A. Holmes may have said in this conversation that he would like to have Pickett released.

Q. Did not he say that Pickett must be released?

A. I do not think he said that. I think he remarked if I remember, that Pickett would be sold out anyhow, and that he was a friend of his and that he would give Holmes a deed, it being understood all the time that we were holding the bank on the guaranty, and looking to the bank only, and that was the only reliance we cared for outside of the collateral security we took in the land.

The Peoples Bank put in evidence (page 104) an agreement made between the Manufacturers National Bank, by Ira Holmes, president and the Peoples Bank of Belleville, by C. W. Thomas, attorney, dated the second day of September, 1874, which says: "It is agreed "between the said Peoples Bank of Belleville and the said "Manufacturers National Bank that the guaranty of the "said Manufacturers National Bank upon eight of said "notes shall be and remain binding upon said Manufacturers National Bank, and that any agreement which "has been or may be made between the Peoples Bank "and said Pickett in regard to said Pickett's liability as "maker or indorser of said notes shall never be construed "to release or in anywise affect said guaranty on eight "of said notes," and another agreement between the same parties, marked "Exhibit B" on page 105, in which the Manufacturers National Bank agrees "That no release of a certain deed of trust executed by Henry E. "Pickett and wife, on the 5th of August, 1874," (1873) "and duly recorded in the recorder's office of Cook "county, Illinois, in Book 236, at page 153, shall operate "to release said bank from its guaranty of eight "of the notes in said deed named, to be selected and retained by the Peoples Bank of Belleville, "the present legal holder of all of said notes in said deed "named; and the said Manufacturers National Bank further "agrees that no release of the maker or indorser of said "notes shall operate to relieve said national bank of its "liability on the said guaranty of eight of the same, the "said Manufacturers National Bank hereby continuing its "guaranty of eight of said notes, notwithstanding any "agreement which may be or may have been made between the holder of the same and the maker or endorser "thereof, and notwithstanding any sale which may be "made under said deed of trust." In other words, that the liability of the Manufacturers National Bank as guarantor upon eight of these Pickett notes should continue, notwithstanding the release of the land from the trust deed by the sale under the power contained in the trust deed in pursuance of the agreement made with Holmes, and notwithstanding the release of the maker, Henry E. Pickett, from further liability upon these notes. This agreement was made upon the assumption that the sale contemplated by the agreement of the 27th of August, would operate simply as a release of the land from the trust deed which had been given to secure the payment of the notes, and that the transaction already had would result in releasing Pickett, the maker of these notes, from further liability upon them. In speaking of this agreement embodied in Exhibits A and B, Thomas, in his testimony, page 79, says: "I took that agreement for the "express purpose of binding the stockholders of the bank "on the guaranty. I did not want any doubt to creep "into the affair, and took every precaution I could. I refused to release the bank, and would rather not enter "into any agreement. Whereupon he agreed to make a "contract continuing the guaranty on eight of the notes, "I yielding two of them." This testimony, in connection with what Holmes says (pages 86–7), shows that the scheme of Thomas acting for the Peoples bank, and Holmes assuming to act for the Manufacturers National Bank, was to deprive the Manufacturers bank and its stockholders of the eighty acres pledged as security for the payment of these notes, then worth $88,000, surrender two of them and continue the guaranty of the bank on the remaining eight notes, amounting to $40,000, release Pickett, the maker, enforce the guaranty upon the eight notes against the stockholders, and apply the proceeds upon Holmes' eighteen notes, aggregating the $87,000. This is the scheme, or rather the conspiracy, which these parties entered upon to defraud the stockholders of the bank. Upon this state of facts the Circuit court manifestly could not do otherwise than reject the claim. That the

release of the maker of a note, whether he is solvent or insolvent, discharges the guarantor, is too well settled to require the citation of any authorities upon the subject. That Pickett was released by this transaction the evidence conclusively shows. The Circuit court could have placed the rejection of the claim upon another ground, to wit: The release of the land pledged for their payment, by the holder of the notes. "The surety," says Chancellor Kent, "by his very character and relation of surety, has
" an interest that the security taken from the principal
" debtor should be dealt with in good faith, and held in
" trust, not only for the creditor's security but for the
" surety's indemnity. The creditor must do no willful
" act, either to poison it in the first instance or to dis-
" charge or cancel it afterwards."

Hayes v. *Ward*, 4 Johnson's Chancery, 130.
Kilpatrick v. *Howk*, 80 Ill., 122.
Rogers v. *School Trustees*, 46 Ill., 428.
Phares v. *Barbour*, 49 Ill., 370.
Baker v. *Briggs*, 8 Pickering, 121.
People v. *Jansen*, 7 Johnson, 322.
Neff's Appeal, 9 Watts and Ser., 36.
~~American League Cases, 5th Edition, 403.~~

" Good faith toward the surety requires that the cred-
" itor should not relinquish such security without the
" surety's consent, and the surety is discharged when the
" creditor has knowingly done anything which deprives
" him of the benefit of the security held by the creditor.
" It was a violation of the trust which resulted from the
" relation in which the creditor stands to the surety."

Schroeppell v. *Shaw*, 3 Comstock, 450.

That the sale under the said Pickett trust deed was not made for the purpose of realizing the value of the security, but simply to release it by placing the title in Holmes, is manifested by the agreement of the 27th of August, and by what C. W. Thomas says (Rec., 78):

" Q. How came you to make this agreement about " releasing the bank on the notes of Pickett? I want to " find out how that came to your mind?

" A. It got through my mind because it was a sort of " coincidence. We wanted the land to bring something " at the sale, and we thought it would be fair. I first " objected to releasing any of it to Mr. Holmes, and I " thought at that time he had been pretty generous, and " I guess, compared with the other creditors, he was " pretty generous, and I thought we would release these " two notes and agree to release the guaranty, deliver " them up, and did so, *and then made the Pickett sale " agree with the transaction.*

" Q. In other words, it was an understanding between " you when the sale was made on the Pickett trust deed, " it should be made to bring $10,000, or about that, and " that therefore you would cancel $10,000 of the paper?

" A. Yes, that was the understanding.

" Q. The whole of the Pickett notes was figured, and " two of them were surrendered?

" A. Nothing was really paid; nothing paid on any of " these transactions; no money passed; if money had been " paid these notes would not have been figured in. *Of " course, it was a mere formality to get the title in Holmes* " in pursuance of this agreement. The whole of the notes " constituted a portion of the consideration of the Holme. " notes. The notes secured by the eighteen mortgages " You understand the sale did not pay the notes: no " money was paid. They stood as a claim against the land " as before."

This arrangement was not made for the puropse of paying the notes, but to get the title in Holmes. Of course, the agreement of Holmes, after the bank went into liquidation, to continue the bank's guaranty upon eight of the promissory notes which the Peoples Bank is now attempting to enforce against the stockholders, is not binding upon the stockholders in view of what this court said in the Irons case.

HENRY G. MILLER,
Atty. for Stockholders.